RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning the Retail Distribution and Sale of Coal in Winnipeg

DEPARTMENT OF JUSTICE
OTTAWA

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1956.

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING THE RETAIL DISTRIBUTION AND SALE OF COAL IN WINNIPEG

COMBINES INVESTIGATION ACT

Ottawa
1956

67814—1

RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Guy Roberge, B.A., LL.L.
Member

A. S. Whiteley, B.A., M.A.
Member

67814—1½

RESTRICTIVE TRADE PRACTICES COMMISSION

Room 451, Justice Building,
Ottawa, January 9, 1956

Honourable Stuart S. Garson, Q.C.,
Minister of Justice,
Ottawa, Ontario

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with the retail distribution and sale of coal in Winnipeg.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard by the Commission at Winnipeg, August 23 to 30, 1954. Messrs. E. D. Honeyman, Q.C., and G. A. MacKay appeared on behalf of the Director of Investigation and Research, and Messrs. I. J. R. Deacon, Q.C., A. G. Eggertson, Q.C., G. R. Hunter, W. Grimble, A. V. Mauro, G. T. Haig and A. G. Findlay appeared on behalf of the several parties mentioned in the Statement of Evidence.

The hearings in this inquiry took place before the appointment of Mr. Guy Roberge to the Commission and he has, therefore, taken no part in the preparation of this report.

Yours faithfully,

(Sgd.) C. R. Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry, undertaken by the Director of Investigation and Research under the Combines Investigation Act, R.S.C. 1952, Chapter 314, was brought before the Restrictive Trade Practices Commission under Section 18 of the Act, which reads as follows:

"18. (1) At any stage of an inquiry,

(a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 411 or 412 of the Criminal Code, and

(b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry which shall be submitted to the Commission and to each person against whom an allegation is made therein.

(2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2)."

The Director submitted to the Restrictive Trade Practices Commission, on April 30, 1954, a Statement of Evidence which

contained the following general allegations:

(a) The evidence discloses that during all or part of the period between 1928 and 1953 the companies and persons named in paragraph 321 [of the Statement of Evidence] have been parties or privy to or have knowingly assisted in the formation and operation of a combine within the meaning of the Combines Investigation Act, having relation to the distribution and sale of coal in the Greater Winnipeg area in the Province of Manitoba. The said combine was designed to have and did have the effect of fixing common prices for the sale of coal at retail; of enhancing the prices of such coal; and of otherwise preventing or lessening competition and restraining or injuring trade or commerce in the distribution and sale of coal.

(b) The said combine has operated and is likely to operate to the detriment or against the interest of the public by enhancing prices and depriving the public of the benefits of competition to which by law it is entitled. Restraints of trade relating to the distribution and sale of the coal are particularly objectionable at the present time when the coal trade is suffering from the competition of alternative fuels such as petroleum products and the trade is therefore in need of all the efficiencies which an active competition can produce.

The Statement also contained the following more detailed allegations:

(c) The principal activity of the Winnipeg Coal Exchange [an association of which many but not all of the retail coal dealers in the Winnipeg area were members] since its formation in 1928 has been the compilation and distribution of price lists containing the prices the retail dealers in Greater Winnipeg were expected to charge their domestic and ordinary steam customers. Since, at least, about 1940 these price lists, which in recent years were called "Price Guides", were distributed to every licensed dealer in Greater Winnipeg.

(d) The domestic and steam prices contained in the price lists were established by agreements made at meetings of the Exchange members or of the Executive and Directors of the Exchange. During the period of wartime price controls such prices were the maximum prices permitted by the Wartime Prices and Trade Board. After price controls were abolished in April 1947, the members of the Exchange instituted a scheme whereby a committee, known as the "Prices Committee" or "Costs Committee", conducted a

periodic survey of the handling costs of a few of the dealers and worked out an "average" cost-of-handling figure. This figure was submitted by the committee to the Executive and Directors for approval, after which it was incorporated by the Manager of the Exchange in a pricing formula which had been established by agreement. The pricing formula was made up of the cost-of-handling figure, charges for degradation and loss of weight, and an amount designed to give 4 per cent net profit on sales. To arrive at the selling prices shown in the price lists the formula was added to the cost of the coal laid down in Winnipeg. The resultant prices were then listed in the Price Guides which were distributed by the Manager of the Exchange. The other members of the Exchange were kept informed, either by circulars distributed by the Manager or at meetings, of the activities of the Price Committee and of the Executive and Directors.

(e) The prices contained in the Price Guides applied to most domestic and steam sales made by the dealers. Exceptions were year-round users, "track" business and "pick-up" sales. With regard to the first two, agreements were made by the members covering the appropriate discounts to be made. These agreements established practices which were followed in most cases. An agreement had also been made a number of years ago covering a discount for pick-up sales but it may have become obsolete. The question of revision was discussed at meetings, but it is not known whether a revised discount was agreed upon.

(f) The evidence discloses that, apart from deviations which were the subject of agreements, there were few deviations from the Price Guides in sales to domestic and steam accounts. At least 85 per cent of sales to domestic accounts were according to the Domestic Price Guides. Deviations from the Steam Price Guides apart from those agreed upon, appear to have been more numerous in the case of a few of the dealers, but were not sufficiently widespread to threaten the price structure or to require downward revisions of the Steam Price Guides. It is clear from the evidence that with the Price Guides the Winnipeg Coal Exchange has succeeded in establishing and maintaining a firm price structure, and that, apart from agreed upon discounts any differences from the Price Guides were in the nature of deviations from established practice.

(g) The activities and agreements connected with the preparation and distribution of the Price Guides were detrimental to the public interest in that they were carried out with the object of raising the level of prices of coal sold at

retail in Greater Winnipeg and were aimed at and succeeded in establishing an artificial price structure which was the basis of pricing to household and steam accounts. The Price Guides were circulated with the object of ensuring that price competition was not indulged in by the dealers. The fact that dealers were sometimes told they were free to depart from the Price Guides is of little significance. Other evidence indicates they were expected to be followed, and in fact were followed by all the dealers. Although it was claimed that the price increases made by the Exchange were based on accurate cost surveys, the evidence shows that the formulas established contained arbitrary cost items which had little relation to actual dealer costs.

(h) That portion of retail sales which was not governed by the Price Guides consisted of tender or contract business, most of which was obtained by members of the Exchange. With regard to the bulk of this business, a group of members of the Exchange, known as the "tender" or "steam group", operated an allocation scheme, whereby the available tonnage was divided among the members of the group according to the sales volume of each member. When tenders for a specific contract were called for the group held a meeting or otherwise determined what dealer or dealers should be the low tenderer or tenderers. The latter then told the Manager of the Exchange what prices they intended to quote and he gave this information to the other members who, if they quoted, quoted higher prices. The allocation scheme had been in operation since 1946, although prices to be quoted on contracts had been discussed at meetings of the Exchange for many years prior to that time.

(i) A number of contracts involving a comparatively small total tonnage were not included in the allocation scheme. Many of these contracts were for quite small quantities and were left open to smaller dealers who were not in the group. Other contracts for larger quantities became available from time to time and the evidence indicates that with regard to at least some of these, agreements were made by the members on the prices to be quoted.

(j) Two dealers - Swail and Turk - who were considered by the group to be members stated they did not take part in the scheme. Other evidence shows that, although not always co-operative, they did take part to some extent at least.

(k) It is apparent from the evidence that the purpose and effect of the tender allocation scheme, which covered more than 85 per cent of the available contract business, was to deprive purchasers of competitive quotations and at the same time to lead them to believe that such quotations were in fact being made. Such a scheme was designed to destroy the very object of purchasing by tender, besides misleading the public. It is the kind of scheme which has been described by the courts as not only collusive but also fraudulent.

2. Parties Mentioned in the Statement of Evidence

In paragraph 321 of the Statement of Evidence it is alleged that the following persons, firms and corporations were the principal parties to the formation or operation of the said combine:

D. E. Adams Coal Ltd.,
Riverton Avenue and Stadacona Street,
Winnipeg, Manitoba

Alsip Brick, Tile and Lumber Co. Ltd.,
508 Portage Avenue,
Winnipeg, Manitoba

Harry Mitchell, doing business under the firm name of Banning Fuel Company,
779 Erin Street,
Winnipeg, Manitoba

John Beverley, doing business under the firm name of Beverley Fuel Supply,
Scotland and Wentworth,
Winnipeg, Manitoba

Braid Builders' Supply and Fuel Limited,
Water Avenue,
Winnipeg, Manitoba

Capital Coal Company Limited,
Pembina Highway at Mulvey Avenue,
Winnipeg, Manitoba

City Coal Company (Winnipeg) Limited,
124 Annabella Street,
Winnipeg, Manitoba

Claydon Company Limited,
290 Garry Street,
Winnipeg, Manitoba

Coal Sales (Canadian) Co. Ltd.,
350 des Meurons Street,
St. Boniface, Manitoba

Cook Fuel & Lumber Co. Ltd.,
341 Princess Street,
Winnipeg, Manitoba

Jerry Nepon and Max Faiman, doing business under the firm name of
Crown Fuel Co.,
570 Pembina Highway,
Winnipeg, Manitoba

The Dominion Lumber & Fuel Co., Ltd.,
667 Redwood Avenue,
Winnipeg, Manitoba

Federal Grain Limited, carrying on business under the name of
Fort Rouge Coal Company,
809 Grain Exchange Building,
Winnipeg, Manitoba

Globe Fuel Co-Operative Limited,
800 Dufferin Avenue,
Winnipeg, Manitoba

Hagborg Fuel Limited,
619 Logan Avenue,
Winnipeg, Manitoba

John Halliday, doing business under the firm name of
Halliday Coal Co.,
935 Erin Street,
Winnipeg, Manitoba

Harstone Coal Company Ltd.,
Stradbrooke and Clarke Streets,
Winnipeg, Manitoba

Governor and Company of Adventurers of England Trading Into Hudson's Bay,
Hudson's Bay House,
79 Main Street,
Winnipeg, Manitoba

Robert Henderson Irvine and William Irvine,
doing business under the firm name of
John Irvine & Sons,
1865 Portage Avenue,
St. James, Manitoba

Thos. Jackson & Sons, Limited,
370 Colony Street,
Winnipeg, Manitoba

D. N. Jamieson & Son Ltd.,
791-3 Erin Street,
Winnipeg, Manitoba

Jubilee Coal Co., Ltd.,
236 Osborne Street,
Winnipeg, Manitoba

Gerard Arnaud, doing business under the firm name of
Lambert Fuel Co.,
45 Notre Dame East,
Winnipeg, Manitoba

McCurdy Supply Company Limited,
Sargent and Erin Streets,
Winnipeg, Manitoba

Joseph S. Miller, doing business under the firm name
of
J. S. Miller Coal Co.,
280 Osborne Street,
Winnipeg, Manitoba

Moore's Coal & Supply Ltd.,
Stradbrooke and Clarke Streets,
Winnipeg, Manitoba

Northland Coal and Ice Co., Ltd.,
300 Pembina Highway,
Winnipeg, Manitoba

North Winnipeg Co-Operative Limited,
1042 Selkirk Avenue,
Winnipeg, Manitoba

People's Co-Operative Limited,
610 Dufferin Avenue,
Winnipeg, Manitoba

H. S. Cormack, doing business under the firm name of
Pioneer Fuel & Supply,
986 Wall Street,
Winnipeg, Manitoba

Samuel Simkin and Saul Simkin, doing business
under the firm name of
Simkin's Fuel Company,
Andrews and Jarvis Streets,
Winnipeg, Manitoba

Roy Swail Ltd.,
589 Portage Avenue,
Winnipeg, Manitoba

Thompson Lumber & Fuel Ltd.,
340 des Meurons Street,
St. Boniface, Manitoba

The Toupin Lumber & Fuel Company Limited,
388 Bertrand Street,
St. Boniface, Manitoba

Alexander Turk, doing business under the firm name of
Alex. Turk Fuel,
271 Gordon Avenue,
Winnipeg, Manitoba

Benjamin Rosenblat and Edward Rosenblat,
doing business under the firm name of
Union Fuel & Builders' Supply Co.,
Stradbrooke and Clarke Streets,
Winnipeg, Manitoba

Windatt Coal Company Limited,
508 Paris Building,
Winnipeg, Manitoba

The Winnipeg Supply & Fuel Company Limited,
8th Floor, Boyd Building,
Winnipeg, Manitoba

Ruben Wolfman, Sam Wolfman and Harry Wolfman,
doing business under the firm name of
Wolfman Fuel,
460 Jarvis Avenue,
Winnipeg, Manitoba

Arthur Harold Brett,
518 Avenue Building,
Winnipeg, Manitoba

3. Hearings and Witnesses

On application by the Director of Investigation and Research, hearings for the taking of Evidence in the inquiry were held before Mr. Guy Favreau, a Member of the Restrictive Trade Practices Commission, on May 13, 1953, and before Mr. C. Rhodes Smith, Q.C., Chairman of the said Commission, between May 25, and June 16, 1953, at Winnipeg, during which the following witnesses were examined. The first two witnesses named were examined before Mr. Favreau and the balance before the Chairman:

Donald Hector MacLean,	- Manager, The Red River Co-Operative Supply Ltd.
Gordon Wallace Leckie,	- Director of Co-operative Education, Manitoba Division of Agricultural Co-operation; President, Red River Co-Operative Supply Ltd.
Archie Charles Chick,	- Manager, Chick Lumber and Fuel Company
David Dalenger,	- Co-Owner, J. Dalenger Coal & Wood
Samuel Feldstein,	- Owner, Feld's Fuel
Peter Rog,	- Owner, Power Coal, Wood and Lumber Co.
Samuel Mazerovsky,	- Vice-President, H. Mazerovsky & Sons Ltd.
Max Reiner,	- Owner, Reiner's Fuel Co.
Maurice E. McDonald,	- Vice-President, McDonald-Dure Lumber Company Ltd.
Michael Bozynski,	- Owner, North End Fuel Company
W. Gordon Welwood,	- President, F. J. Welwood & Co. Ltd.
Michael Kopynsky,	- Manager, Consumers' Co-Operative, U.C.F. Ltd.
Michael Wozniak,	- Manager, Washington Fuel

Albert Shambrock,	- Manager, Globe Fuel Co-Operative Limited
Fred de Sieyes,	- President and Manager, Coal Sales (Canadian) Co. Ltd.
Harry Mitchell,	- Owner, Banning Fuel Company
John Halliday,	- Owner, Halliday Coal Co.
Henry De Leeuw,	- Secretary Treasurer and Manager, De Leeuw Lumber and Fuel Company Limited
John Walter Jamieson,	- Secretary Treasurer, D. N. Jamieson & Son Ltd.
Morris Yanovsky,	- Manager, Superior Coal & Wood Yard
George Alexander Porterfield,	- Accountant and Credit Manager, Alsip Brick, Tile and Lumber Co. Limited
Wilfred R. Kell,	- in charge of Coal Department, Alsip Brick, Tile and Lumber Co. Limited
William Gordon Braid,	- Secretary Treasurer, Braid Builders' Supply and Fuel Limited
George Alexander MacKay,	- Combines Investigation Officer
Edward Cook,	- Owner, Cook Fuel & Lumber Co. Ltd.
Ernest Claydon,	- Vice-President, Claydon Company Limited
Edmond Hector McNeil,	- Partner, H. J. McNeil Fuel
Leonard J. O'Brien,	- Manager of Coal Department, Searle Grain Company Limited
Glen Marcellus Cowles,	- Officer in Coal Department, Searle Grain Company Limited
Myron Kostaniuk,	- Manager of Fuel Yard Department, People's Co-Operative Limited

Harry Lorne Thompson,	- Vice-President and General Manager, Thompson Lumber & Fuel Ltd.
Thomas Sidney Carver,	- Owner, T. P. Carver & Son
Joseph Alexandre Bernard Rodrigue,	- Managing Director, The Toupin Lumber & Fuel Company Limited
Arthur Harold Brett,	- Manager, Winnipeg Coal Exchange
Leonard D. Rankin,	- Purchasing Agent, Winnipeg School Board
Raymond A. W. Vidler,	- Manager of Retail Fuel Sales, The Winnipeg Supply & Fuel Company Limited
John Bryan Baillie,	- Manager, Thos Jackson & Sons, Limited
Edward Holmes Munro,	- Manager of the Coal & Wood Department, Governor and Company of Adventurers of England Trading into Hudson's Bay
William Forbes Kerby,	- Vice-President and Sales Manager, Capital Coal Company Limited
Robert Henderson Irvine,	- Co-Owner, John Irvine & Sons
Joseph S. Miller,	- Owner, J. S. Miller Coal Co.
George C. Galbraith,	- President and Manager, Northland Coal and Ice Co., Ltd.
John Beverley,	- Owner, Beverley Fuel Supply
Saul Simkin,	- Co-Owner, Simkin's Fuel Company
James Mowat,	- Manager, Fort Rouge Coal Company (operated by Federal Grain Limited)
Harold B. Irving,	- Vice-President and Manager, Jubilee Coal Co., Ltd.

Benjamin Rosenblat,	- President, Harstone Coal Company Ltd. President, Moore's Coal & Supply Ltd. Co-Owner, Union Fuel & Builders' Supply Co.
Ernest M. Rose,	- Manager, Harstone Coal Company Ltd.
Alexander Turk,	- Owner, Alex. Turk Fuel
Roy Swail,	- President, Roy Swail Ltd.
Sam Wolfman,	- Co-Owner, Wolfman Fuel
Percival G. Hawkins,	- Sales Manager, McCurdy Supply Company Limited
Jerry Nepon,	- Co-Owner and Manager, Crown Fuel Co.
Michael A. Mitenko,	- Manager and Secretary, D. E. Adams Coal Ltd.
Lionel Elmer Wood,	- Vice-President, D. D. Wood & Sons Limited
Gerard Arnaud,	- Owner, Lambert Fuel Co.
William Safian,	- Manager of Fuel Yard, North Winnipeg Co-Operative Limited
Pierre Raimbault,	- President and Manager, The Cusson Lumber Company Limited
Max Margolis,	- President and Manager, The Dominion Lumber and Fuel Co., Ltd.
Frank Tarko,	- Owner, Fort Garry Fuel Company
Charles George MacKay,	- Officer, Alex. Turk Fuel
Hugh Wallace,	- Secretary-Treasurer, Windatt Coal Company Limited
Alexander Robertson,	- President and General Manager, The Winnipeg Supply & Fuel Company Limited

E. Albin Hagborg,	- Managing Director (and President), Hagborg Fuel Limited
Thomas A. Duncan,	-
George H. Coleman,	- Owner, G. Coleman
Harry S. Cormack,	- Owner, Pioneer Fuel & Supply
Aaron Green,	- Owner, Manitoba Fuel Company
Joseph A. Hutchison,	- Director, Palace Fuel & Supply Limited
John L. Kerr, Jr.,	- President, Palace Fuel & Supply Limited
Peter Belski,	- Owner, Wes-Brook Coal Co.
Harry Rice,	- Co-Owner, Uneeda Coal Co.
Morris Schwartzman,	- Owner, Reliable Lumber & Fuel Co.
Clarence Thomas Baker,	- Owner, Sargent Fuel

In accordance with Section 18(1) of the Combines Investigation Act, the Statement of Evidence was submitted to the Restrictive Trade Practices Commission and also to each of the persons against whom an allegation was made therein. The Commission by an Order dated June 3, 1954, fixed Monday, August 23, 1954, at 10 o'clock in the forenoon, at the Law Courts Building, Kennedy and Broadway, in the City of Winnipeg, as the place, time and date, at which argument in support of the Statement of Evidence might be submitted, and at which persons against whom any allegation had been made in such statement would be allowed full opportunity to be heard in person or by counsel, the whole in compliance with Section 18(2) of the Act. In giving notice thereof, the Commission further informed the parties that at such hearing they would have the opportunity of further examining, or cross-examining, any witness who had been heard during the course of the inquiry or of having called any additional witnesses or of submitting any additional documentary evidence.

The hearing opened at the Law Courts Building in Winnipeg, on August 23, 1954, and concluded on August 30, 1954. The following appearances were registered:

E. D. Honeyman, Esq., Q.C., and G. A. MacKay, Esq.,	- For Director of Investigation and Research;

G. R. Hunter, Esq., and W. Grimble, Esq.,	- For Winnipeg Coal Exchange; for Mr. A. H. Brett, as Manager of the Winnipeg Coal Exchange and in his personal capacity; for all members of the Winnipeg Coal Exchange not otherwise represented by their own counsel; for the members of the so-called "Tender Group" not otherwise represented;
A. G. Eggertson, Esq., Q.C., and A. V. Mauro, Esq.,	- For the Winnipeg Supply & Fuel Company Limited, and The Toupin Lumber & Fuel Company Limited;
G. T. Haig, Esq.,	- For Thos. Jackson & Sons, Limited;
A. G. Findlay, Esq.,	- For Hudson's Bay Company;
I. J. R. Deacon, Esq., Q.C.,	- For Federal Grain Limited, carrying on business under the name of Fort Rouge Coal Company.

In the course of the hearings certain documentary exhibits were received and the following witnesses were examined:

Arthur Harold Brett,	- Manager of the Winnipeg Coal Exchange;
Douglas G. Scott,	- Chartered Accountant and partner in the firm of Sharp, Woodley, Scott and McLaughlin;
Gilbert Edward Jackson,	- Consulting Economist, Toronto, Ontario;
John Small Noble,	- Secretary and Treasurer, Carnegie Dock and Fuel Company, of Minneapolis, Minnesota;

Raymond A. W. Vidler, - Manager of retail fuel sales, The Winnipeg Supply & Fuel Company Limited;

Edward Holmes Munro, - Manager of the Hudson's Bay Company's retail coal department.

For purposes of clarity, reference in this report to evidence given at hearings for the taking of evidence before the Chairman or Mr. Favreau will be made as follows: "Transcript of Evidence, p. . . .". Reference to evidence given at the hearings before the Commission will be made as follows: "Transcript of Hearing, p. . . .".

4. Position Taken by the Parties Named in the Statement of Evidence with Respect to the Allegations Therein

The parties named in the Statement of Evidence had been informed by the Commission (in a letter dated June 14, 1954) that, at the opening of the hearing, before any evidence or argument was offered, each party represented would be called upon to state precisely the position taken with respect to the Statement of Evidence, in particular, whether issue would be taken on the facts submitted in the said Statement of Evidence and, if so, on what facts, and whether issue would be taken on the conclusions submitted by the Director in the form of allegations of misconduct and, if so, on what allegation or allegations, and what propositions or conclusions would be submitted in reply thereto. The Commission indicated also that it would be of great service to the Commission if written briefs outlining the position taken could be submitted before the commencement of the hearing.

Before the commencement of the hearing the Commission received written submissions from Alsip Brick, Tile and Lumber Co. Ltd., and Halliday Coal Co. After the hearing the Commission received a written brief from People's Co-Operative Limited.

The main points on which issue was taken in written submissions and briefs received by the Commission, and in general statements made by counsel for the parties named at the opening of the hearing may be outlined substantially as follows for the respective parties:

(1) Counsel for all parties contended that the allegations or charges set forth in the Statement of Evidence were not supported by the evidence, and stated it was the intention of the parties to call other evidence to rebut these allegations.

(2) Counsel for all parties contended that a very clear line of distinction and demarcation should be drawn between the Winnipeg Coal Exchange, its Manager, and its member dealers on the one hand, and on the other hand, certain coal dealers and Mr. A. H. Brett, in his personal capacity, who were alleged to have operated or controlled or worked through what the Statement of Evidence called "the tender group", which was alleged to have administered an "allocation scheme". It was contended that the Winnipeg Coal Exchange, as such, should not be confused in any way with the allocation scheme or tender group and that those dealer members of the Winnipeg Coal Exchange who were not in the so-called allocation or tender group had nothing to do with it, and that their position should be considered completely separate and apart from it.

(3) Counsel for all parties denied that, during all or part of the period between 1928 and 1953, the companies and persons against whom allegations were made in the Statement of Evidence were parties or privy to or knowingly assisted in the formation and operation of a combine within the meaning of the Combines Investigation Act, having relation to the distribution and sale of coal in the Greater Winnipeg area in the Province of Manitoba.

(4) Counsel for all parties denied that the activities of the Winnipeg Coal Exchange, and any activities of the coal dealers in Winnipeg, had operated to the detriment or against the interest of the public by enhancing prices and depriving the public of the benefits of competition to which, by law, it is entitled.

(5) It was admitted by counsel that there was an organization known as the Winnipeg Coal Exchange and that one of its functions was the preparation and publication of lists of prices known as Price Guides, but it was not admitted that the preparation and publication of Price Guides was the main or principal purpose of the Exchange. It was not admitted that these Price Guides were established by agreements or arrangements made at meetings of members of the Exchange or of the Executive and Directors of the Exchange. Counsel denied that the Price Lists were agreed upon at any time. It was also denied that the object or purpose in preparing these guides was price fixing, or enhancing prices.

(6) It was admitted by counsel that those dealers who were named as belonging to the so-called "tender group" met on various occasions for the purpose of discussing the allocation of tender contracts. But it was denied that the object

of the allocation scheme, or tender scheme, was to arrive at arrangements or agreements with regard to fixing prices, enhancing prices, lessening competition, or restraining trade and commerce. It was contended that the Winnipeg Coal Exchange, its Manager, and its member dealers had no part, as such, in any allocation scheme such as that referred to by the Director.

(7) Counsel contended that the list of the parties named in the Statement of Evidence as having been parties or privy or having knowingly assisted in the formation or operation of a combine should not be restricted to those only who were in business and members of the Exchange in 1952, but should include also those who, some time during the period of 1923 to 1953, were members of the Winnipeg Coal Exchange and who had since gone out of business. It was also contended that the Red River Co-Operative Supply Ltd. and M. McMahon, both still in business at the time of the inquiry, should have been included among the parties named in the Statement of Evidence. [Note: The Red River Co-Operative Supply Ltd. dropped its membership in the Winnipeg Coal Exchange in 1952. According to a return made by Mrs. McMahon, M. McMahon became a member of the Exchange in 1950]

(8) Counsel contended that in recent years coal in Winnipeg had not been losing ground in competition with oil, as heavily as suggested by the Statement of Evidence.

(9) Counsel denied that there was any arrangement or agreement among the members of the Exchange regarding year-round users, "track" business and "pick-up" sales, but it was admitted that while there was no agreement, there was a practice regarding these particular types of business and this practice had been followed by other dealers outside the Exchange members.

(10) Counsel for the Fort Rouge Coal Company [Federal Grain Limited] contended that the Statement of Evidence presented by the Director was not a true picture of the evidence, but a piece-meal compilation of certain bits of evidence from which he had drawn conclusions not justified by the evidence as a whole.

(11) Counsel for the Hudson's Bay Company contended that the evidence disclosed that it was not a member of the Winnipeg Coal Exchange, consequently its position was entirely different from that of members of the Exchange. It was contended also that the evidence disclosed that the Hudson's Bay Company had nothing to do with the so-called "tender group".

(12) Counsel for Thos. Jackson & Sons, Limited contended that the allegations made against them were not supported by fact, and that the facts stated in support of these conclusions had not taken place.

(13) Counsel for the Winnipeg Supply & Fuel Company Limited, and The Toupin Lumber & Fuel Company Limited, contended that the activities of the Winnipeg Coal Exchange were not primarily directed to fixing prices but were intended for broader sale purposes, including publicity.

(14) On the part of Alsip Brick, Tile and Lumber Co. Ltd., in written briefs submitted prior to the hearing, it was contended that:

(a) The Winnipeg Coal Exchange as a trade association has benefited the public in trying to put the retail business on a good honest footing. The customer can now be assured of a fair deal at a fair price; something greatly lacking in former years. The Exchange was helpful in many ways to the coal dealers, particularly to those small dealers where the coal business is an adjunct of a much larger business.

(b) The Price Guides issued by the Exchange were in fact guides only. No compulsion was ever put on the company, by anyone connected with the Exchange, to adhere to these prices. Much of the company's business (in the year 1953-1954 almost 40%) was done at prices below those shown on the Price Guides.

(c) The company was entirely unaware of the bidding and alloting of steam coal contracts by a few of the coal dealers in Winnipeg. The company was never represented at such meetings and never bid on any of such contracts.

(d) The company was rarely represented at meetings of the Exchange, except the annual meetings, where little if any business was even discussed.

(15) On the part of Halliday Coal Co., in a written brief submitted prior to the hearing, it was contended that:

(a) The firm did not take any active part in the Winnipeg Coal Exchange, had not attended any meeting in years, and was under no agreement with anyone to sell coal at any certain price;

(b) The ceiling price was fixed for the firm by the advertised price of large dealers handling the same kinds of

coal. The firm's margin of profit (about 86¢ per ton net during the eight years ending June 30, 1953, without counting any salary for the owner or any interest on the investment) was too small to permit sales at lower prices.

(16) On the part of the People's Co-Operative Limited, in a written brief submitted after the hearings, it was contended that:

(a) People's Co-Operative Limited joined the Winnipeg Coal Exchange in 1943, during the war period, when it was difficult to obtain an adequate supply and variety of coal.

(b) Joining the Coal Exchange had no bearing upon the company's policy regarding the sale price of coal. The company's policy has been to sell coal at the prevailing prices and pay a patronage dividend at the end of the fiscal year, based on the net surplus for the year. In addition to patronage dividends on fuel purchases, there has been a dividend on share capital paid to the members.

(c) The Price List Guides were sent by the Exchange to all coal dealers, irrespective of membership in the Coal Exchange, and were not mandatory or obligatory upon the company.

(d) The company was not aware of the practices on the part of some coal dealers connected with the so-called "tender group", as these matters were never discussed at any of the annual meetings of the Coal Exchange at which representatives of the company were present. The first time the company was made aware of these activities was through the study of the Statement of Evidence. The company was never a party to any agreements or discussion regarding tenders on fuel. Following the study of the Statement of Evidence, and in protest against such practice, the company resigned from the Winnipeg Coal Exchange.

(e) Considering the above, People's Co-Operative Limited should be withdrawn from the list of the parties named in the Statement of Evidence.

CHAPTER II

THE COAL INDUSTRY IN CANADA AND THE RETAIL COAL TRADE IN GREATER WINNIPEG

1. Resources, Production and Consumption of Coal in Canada

It is well known that the total coal resources of Canada are very great. In the report of the Royal Commission on Coal, rendered in 1946, this country's coal resources were estimated at about 99,000 million tons of mineable coal, of which it was estimated that about 50% or 49,000 million tons might actually be recovered and brought to the surface. Based upon the current level of production of coal these resources were estimated as sufficient to allow for continued mining for more than 2,700 years.

Canadian coal deposits are distributed very unevenly across the country. According to the same Commission's report the country's reserves are distributed among the various provinces as follows: Alberta - about 48%; Saskatchewan - about 24%; British Columbia - about 19%; the Yukon and Northwest Territories - slightly less than 5%; Nova Scotia - a little over 3%; New Brunswick has some comparatively small deposits and the other provinces have little or no coal.

It will be observed from this estimate that the great bulk of Canada's coal resources is situated in the three Western provinces, Saskatchewan, Alberta and British Columbia, which between them possess almost 92% of the total reserves of the country.

Canadian coal consists mainly of lignite, sub-bituminous and bituminous. Anthracite or hard coal is almost completely lacking.

Actual coal production in Canada is confined in the east mainly to Nova Scotia, with New Brunswick producing in much smaller volume, and in the west to Saskatchewan, Alberta and British Columbia. Since no coal is produced in Central Canada, the most industrialized parts of Canada rely on imported coal, partly from other provinces, but mainly from the United States. For example, in 1952, Quebec imported from abroad almost three quarters of the coal which it consumed and Ontario imported more coal than was produced in the whole of Canada.

In the year 1952, the total output of the coal mines of Canada was 17,579,002 tons, of which about 6.6 million tons were produced in the Maritime provinces and about 10.9 million tons in the

Western provinces (Saskatchewan 2.1 million tons, Alberta 7.2, British Columbia 1.6). Imports in the same year amounted to 24,932,853 tons, and exports amounted to 388,960 tons. The total coal available for consumption was 42,122,895 tons. It seems that not quite all of these 42 million odd tons were actually consumed, in that the Statement of Evidence says that actual consumption of coal in 1952 throughout Canada was about 41 million tons.

The coal and coke statistics published by the Dominion Bureau of Statistics give the following figures for coal production in Canada for the years 1945 to 1954 inclusive:

Production of Coal in Canada

1945	- 16,506,713	tons
1946	- 17,811,747	"
1947	- 15,858,866	"
1948	- 18,449,689	"
1949	- 19,120,046	"
1950	- 19,139,112	"
1951	- 18,586,823	"
1952	- 17,579,002	"
1953	- 15,900,673	"
1954	- 14,906,049	"

From these figures it appears that coal production in Canada reached its peak in 1950, and since then has been receding. The production figures for 1954 show a reduction of more than 4,200,000 tons from the peak reached in 1950, substantially more than 20%. The Statement of Evidence indicates that high mining and transportation costs, competition from petroleum products and such fortuitous circumstances as strikes and unusually mild winters have contributed to the lower trend in coal production.

Exports of Canadian coal have never been very large. This is scarcely surprising when we consider that Canadian mines produce considerably less than half the coal consumed in Canada. Looking at the period from 1945 to 1954, we find that for the first four years of the period, 1945 to 1948, exports of Canadian coal ranged from a low in 1947 of 714,549 tons to a high in 1948 of 1,273,262 tons. The year 1948 was quite exceptional, due to unusually large shipments of coal to Japan. In no year since 1948 have exports reached the figure

of 500,000 tons. Since 1951, the trend has been steadily downward until in 1954 exports fell to 219,346 tons, the lowest point in many years.

As already mentioned, Canada imports considerably more than half of the total coal which is consumed in the country. Some coal is imported from Great Britain, and a few tons from other countries, but the great bulk of it comes from the United States. The import figures, derived from tables published by the Dominion Bureau of Statistics, are as follows for the years 1945 to 1954:

Imported Foreign Coal

Year	United States tons	Great Britain tons	Other Countries tons	Total tons
1945	25,033,168	28,388	-	25,061,556
1946	26,005,019	101,580	-	26,106,599
1947	28,838,717	52,777	436	28,891,930
1948	30,711,348	162,550	14	30,873,912
1949	21,863,736	331,457	17	22,195,210
1950	26,530,649	423,874	300	26,954,823
1951	26,509,695	291,656	54	26,801,405
1952	24,576,821	356,032	-	24,932,853
1953	22,913,158	352,383	-	23,265,541
1954	18,312,895	266,304	790	18,579,989.

United States coals entered Canada under very favourable tariff conditions. Under customs tariff items 586, 587, 588 and 588b, we find that since 1948 anthracite and lignite coal and coke coming from the United States have been on the free list and that other coals have been subject to a tariff of 50¢ per ton.

2. The Retail Coal Trade in Greater Winnipeg

This inquiry is concerned with the retail sale of coal in Greater Winnipeg, which, as described in the Statement of Evidence, means the cities of Winnipeg and St. Boniface, the towns of Transcona

and Tuxedo, and the municipalities of Assiniboia, Brooklands, Charleswood, East Kildonan, Fort Garry, North Kildonan, St. Charles, St. James, St. Vital and West Kildonan.

(a) Sources of Coal

"Coal", in so far as it is used in connection with the activities of the Winnipeg dealers, is meant to include coke and briquettes.

The coal consumed in the Greater Winnipeg area comes from the three provinces west of Manitoba, or from the United States of America. Most of the Canadian coal consumed in Winnipeg comes from Saskatchewan or Alberta, with British Columbia supplying lesser quantities. The Saskatchewan mines supply only lignite coal, while the coal coming from Alberta is either bituminous or sub-bituminous, and that supplied by British Columbia is bituminous. The lignite coal from Saskatchewan is often mixed with bituminous coals from Alberta or British Columbia or from the United States, thus producing a composite coal of higher quality. Fairly substantial quantities of coal are imported from the United States for consumption in the Winnipeg area. This American coal consists largely of stoker coals and briquettes. No lignite, and only small quantities of anthracite and coke, are imported from the United States into the Winnipeg area. Shipments of American coal to Greater Winnipeg are usually made from docks in Fort William or Duluth.

Coal dealers in Winnipeg purchase coal through wholesalers or mine agents who operate in the city, chiefly as brokers. However, while coal is purchased in this way it is usually shipped to the dealers directly from the mines or docks. Purchases are made by the carload and there is no discount for quantity. Witnesses in the inquiry stated that small discounts are normally given by the mines during the late spring and summer months to encourage dealers to take delivery of coal during the off season. These discounts are quite small and are considered by the dealers to be offset by the extra costs incurred by stocking and by the degradation of coal during storage. However, the purchases made during the summer are said to guarantee for the dealers the delivery of a certain amount of coal during the succeeding winter.

In 1952, three of the retail dealers concerned in this inquiry, namely Thos. Jackson & Sons, Limited, The Winnipeg Supply & Fuel Companv Limited, and Windatt Coal Company Limited also operated wholesale departments.

(b) Consumption of Coal

In 1952 coal sold at retail in Greater Winnipeg, as reported by the Dominion Bureau of Statistics, was equivalent to about 6-1/2% of

all coal sold at retail in Canada and about 34% of that sold at retail in the Western provinces, to about 4% of all coal mined in Canada, and about 6% of that mined in the Western provinces.

The following table shows the total sales in tons by dealers of coal and coke (including briquettes) in the Greater Winnipeg area since 1942, as reported by the Dominion Bureau of Statistics:

Retail Coal Sales in Greater Winnipeg

Year	Western Canadian Coals*	U. S. Coals	Other Imported Coals	Total
1942	541,327	60,808	503	602,638
1943	547,219	156,760	203	704,183
1944	470,523	102,220	40	572,783
1945	517,572	116,288	15	633,875
1946	569,048	132,314	-	701,362
1947	583,060	153,121	-	736,181
1948	630,634	135,048	-	765,682
1949	708,625	129,251	-	837,876
1950	780,329	117,557	-	897,886
1951	702,656	106,140	-	808,796
1952	599,891	91,484	-	691,375
1953	550,220	90,682	-	640,902
1954	497,639	93,235	-	590,874

* includes coke produced in Winnipeg

The above figures show that the consumption of coal in the Winnipeg area reached its peak in 1950 and since then has been steadily receding. In the opinion of the Director, based on evidence obtained in 1953, the decrease in sales in 1951 and 1952 was partially due to coal users converting to oil and also to unusually mild winters. It should be noted that the trend continued through 1953 and 1954, in which latter year the reduction in sales amounted to more than a third from the high point in 1950.

In 1941, in the City of Winnipeg, coal was the principal heating fuel in 75.3% of the occupied dwellings. In 1951 this proportion had increased to 85.7%. The corresponding figure for the Greater Winnipeg area for 1951 was 83.8% of occupied dwellings, which was the highest of any metropolitan area reported by the Dominion Bureau of Statistics, the next highest being Hamilton with 73.3%, and the lowest being Calgary with 2.8%.

Oil was the principal heating fuel in 1% of the occupied dwellings in 1941, and in 9.2% in 1951. (The corresponding figure in 1951 for Greater Winnipeg was 12%).

During the decade of 1941-1951, the position of both coal and oil improved in the Winnipeg area at the expense of wood. According to the Statement of Evidence, wood became a negligible factor in the trade in Greater Winnipeg for a number of reasons, including high prices. The publications of the Dominion Bureau of Statistics show that, in the City of Winnipeg, the use of wood declined from 23% of occupied dwellings in 1941 to 1% in 1951.

However, since 1951, in the opinion of the Director, coal has been losing heavily to oil in the Winnipeg area, although the volume of coal consumed in 1951 and 1952 was still high and in dollar value probably as high as that for any year prior to 1950. During the hearing it was represented by counsel that, in comparison with other cities, coal in Winnipeg was not losing as heavily to oil as suggested by the Director. If the price of coal in Winnipeg had been extraordinarily high, it was argued, the rate of decrease in coal consumption would have been as rapid as in other cities, or more so, but, in fact, this had not been the case (Transcript of Hearing, p. 514).

In an attempt to overcome this trend towards the use of oil, the Winnipeg dealers conducted, during the years 1950 to 1952 inclusive, an advertising campaign pointing out the advantages of the use of coal as a domestic fuel. Further, efforts were made to offset the attractions of oil heating by encouraging the sale of stokers and by trying to secure regular delivery of cleaner coals of uniform quality. The Manager of the Winnipeg Coal Exchange issued circulars pointing out that many coals were considerably cheaper than fuel oil of equivalent heat content.

Commenting on this decline in the sale of coal in the Winnipeg area, the Director made, in the Statement of Evidence, the following remark:

> "It is not necessary here to attempt to estimate to what extent oil, or for that matter natural gas, will supplant coal for heating purposes. There is no doubt however that this actual or potential competition makes it imperative for the coal industry that coal be handled at the lowest possible price

and with the greatest possible efficiency."

The latter statement was referred to by counsel during the hearing and the argument on this point will be dealt with later in this report.

(c) Consumers of Coal

The consumers of coal in Greater Winnipeg are described in the Statement of Evidence as follows:

> "The documentary and oral evidence indicates that, apart from certain industrial and government accounts which purchase coal direct from wholesalers or agents, the following classification of the various consumers of coal in Greater Winnipeg is accepted by the retail dealers:
>
> 1. Domestic Accounts: This term is applied to householders, who buy relatively small quantities of coal throughout the season and usually take delivery of no more than one to three tons at one time. Almost all the coal sold to them is delivered in 100-lb. bags.
>
> 2. Steam or Block Accounts: These are commercial establishments, such as office buildings, hotels, apartment blocks, etc., which use fairly large quantities of coal during the heating season. The coal is delivered in bulk and in larger quantities than to domestic consumers. Many of these accounts have fairly substantial storage facilities enabling deliveries to be made easily and at scheduled intervals. In some cases, where the building is on a railway siding, deliveries are made in carload lots of 40 to 60 tons. The above factors enable deliveries to such accounts to be made at much lower cost to the dealer than is the case with domestic users. The evidence indicates that the dealers have not been able to draw a clear line of distinction between domestic and steam accounts for pricing purposes, although attempts to do so have been made, as will be seen below.
>
> 3. Year Round Users: A steam account who uses substantial quantities throughout the year comes within this classification. Some such establishments are laundries, bakeries, dairies and breweries. Such accounts are very attractive to the dealers because they help to keep labour and equipment employed during the slack summer season and for this reason they are usually given preferential discounts.
>
> 4. Contract Accounts: These consist mainly of Federal, Provincial or Municipal institutions which call for tenders for the season's supply of coal to various buildings such as schools,

public buildings, hospitals and the like. Some of the contracts awarded are for large quantities up to 10,000 or 12,000 tons and some require delivery to a number of buildings. Other contracts are quite small, e.g. certain municipal schools require as little as fifteen tons for the season. For almost all of these contracts the overhead, delivery and storage cost factors are as low or lower than for steam accounts, and the prices quoted on many of them have been lower than for steam accounts.

5. Pick-up Accounts: Some domestic customers, mainly farmers, buy their coal supply at the dealers' yards and take it home in their own trucks. They obtain price concessions from the dealers on such purchases."

During the argument it was represented by counsel that the Director's reference, in paragraph 13, sub-paragraph 3, of the Statement of Evidence, to the accounts of the so-called "Year Round Users" as "very attractive" was too strong a statement and not justified by the evidence given. Counsel argued that these accounts were not very attractive and that the Director's statement implied high profit returns from this source, which was misleading. To support this contention, counsel referred to the following evidence given by Mr. J. Nepon of the Crown Fuel Company:

"BY THE CHAIRMAN:

. . .

Q. I was trying to see what your margin was?

A. On Perth?

Q. On these contracts such as Perth where you give $1.50 off the list price?

A. It is not much. It gives us about 25 cents a ton, net.

Q. After paying the cost of delivery?

A. Yes.

BY MR. HONEYMAN:

Q. Do you mean that is covering your profit and your overhead?

A. We cannot do any business on that kind of business; it is more of a trucking proposition than anything else. If I had ten contracts like Perth's Dye Works, which would keep about four trucks going steadily, I could not make a living out of it.

Q. You would go broke?

A. Yes, I would go broke. But, as it is, this works in with the other. It gives one or two of our truck drivers a year-round job, you understand. If we were to have to keep a man in the yard for, let us say, Crown Cleaners or Graham Cleaners once a week, we could not do it. But keeping Perth's supplied, keeps him going about 75 per cent of the time, between Perth's and Rumford's. And whatever else fills in, we have the man employed right through the year on our delivery.

. . ."

(Transcript of Evidence, pp.2082-83)

For sales to householders ("Domestic Accounts") there is no need for a dealer to have much equipment in order to operate as a coal merchant. What he needs is a coal yard beside a railway siding, storage capacity of 150 tons or more, weigh scales, a truck, some office facilities and one or two helpers. A number of small dealers connected with this inquiry have operated in this way. However, to handle the so-called "Steam or Block Accounts" and "Contract Accounts", dealers generally use other equipment, such as conveyors and hoppers, which allow them to handle large quantities more efficiently. Larger storage capacity is also needed for such business. Without such equipment and storage facilities the dealers are usually not in a position to handle the larger accounts.

(d) The Winnipeg Coal Dealers

Since 1940 the total number of coal dealers operating in Winnipeg has decreased considerably. In that year there were 111 dealers, and in 1945 there were 85. Between June 1, 1952, and May 31, 1953, a total of 68 dealers were licensed by the City of Winnipeg.

The Statement of Evidence submitted by the Director is primarily concerned with the operations in Greater Winnipeg of the 68 licensed retail coal dealers. The firm names of these 68 dealers (with the abbreviated names which are commonly used in this report) are listed in paragraph 14 of the Statement of Evidence as follows:

"D. E. Adams Coal Ltd.	Adams
Alsip Brick, Tile and Lumber Co. Ltd.	Alsip
Banning Fuel Company	Banning
Beverley Fuel Company	Beverley
Braid Builders' Supply and Fuel Limited	Braid
Capital Coal Company Limited	Capital
T. P. Carver & Son	Carver
Chick Lumber and Fuel Company	Chick

City Coal Company (Winnipeg) Limited	City Coal
Claydon Company Limited	Claydon
Coal Sales (Canadian) Co. Ltd.	Coal Sales
G. Coleman	Coleman
Consumers' Co-Operative, U.C.F. Ltd.	Consumers' Co-Op
Cook Fuel & Lumber Co. Ltd.	Cook
Crown Fuel Co.	Crown
The Cusson Lumber Company Limited	Cusson
J. Dalenger Coal & Wood	Dalenger
Dawson Fuel & Supply Company Limited	Dawson
De Leeuw Lumber and Fuel Company Limited	De Leeuw
The Dominion Lumber and Fuel Co., Ltd.	Dominion
Feld's Fuel	Feld
Fort Garry Fuel Company	Fort Garry
Fort Rouge Coal Company	Fort Rouge
Globe Fuel Co-Operative Limited	Globe
Hagborg Fuel Limited	Hagborg
Halliday Coal Co.	Halliday
Harstone Coal Company Ltd.	Harstone
Hudson's Bay Company	Hudson's Bay
John Irvine & Sons	Irvine
Thos. Jackson & Sons, Limited	Jackson
D. N. Jamieson & Son Ltd.	Jamieson
Jubilee Coal Co., Ltd.	Jubilee
Lambert Fuel Co.	Lambert
Manitoba Fuel Company	Manitoba
H. Mazerovsky & Sons Ltd.	Mazerovsky
McCurdy Supply Company Limited	McCurdy
McDonald-Dure Lumber Company Ltd.	McDonald-Dure
M. McMahon	McMahon
H. J. McNeil Fuel	McNeil
J. S. Miller Coal Co.	Miller
Moore's Coal & Supply Ltd.	Moore
North End Fuel Company	North End
Northland Coal and Ice Co., Ltd.	Northland
North Winnipeg Co-Operative Limited	North Winnipeg Co-op
Palace Fuel & Supply Limited	Palace
People's Co-Operative Limited	People's Co-op
Pioneer Fuel & Supply	Pioneer
Power Coal, Wood and Lumber Co.	Power
Red River Co-Operative Supply Ltd.	Red River
Reiner's Fuel Co.	Reiner
Reliable Lumber & Fuel Co.	Reliable
Sargent Fuel	Sargent
Searle Grain Company Limited	Searle
Simkin's Fuel Company	Simkin
Superior Coal & Wood Yard	Superior
Roy Swail Ltd.	Swail
Thompson Lumber & Fuel Ltd.	Thompson

The Toupin Lumber & Fuel Company Limited	Toupin
Alex. Turk Fuel	Turk
Uneeda Coal Co.	Uneeda
Union Fuel & Builders' Supply Co.	Union
Washington Fuel	Washington
F. J. Welwood & Co. Ltd.	Welwood
Wes-Brook Coal Co.	Wes-Brook
Windatt Coal Company Limited	Windatt
The Winnipeg Supply & Fuel Company Limited	Winnipeg Supply
Wolfman Fuel	Wolfman
D. D. Wood & Sons Limited	Wood "

The Winnipeg coal dealers listed in paragraph 14 of the Statement of Evidence, according to the returns and the oral evidence, sold, at retail, in the year 1952 in the Greater Winnipeg area about 723,000 tons of coal. The Dominion Bureau of Statistics reported that in 1952 the retail sales of coal in Winnipeg amounted to 691,375 tons. The difference between these two figures was not explained by evidence, but the Statement of Evidence suggested the possibility that the figures submitted in evidence may have included some inter-dealer sales, or that some dealers did not report all their sales to the Dominion Bureau of Statistics. Another explanation offered was that some dealers could only supply estimates of their sales. However, it seems to be obvious that the 68 dealers mentioned above accounted for practically all the coal sold at retail in the Winnipeg area in 1952.

From the standpoint of sales volume, these dealers range from one who, in 1952, sold only 500 tons to one who sold over 100,000 tons. The Statement of Evidence gives the following table, classifying dealers according to sales, based on tonnage sold in 1952:

Classification of Retail Coal Dealers by Size - 1952

Over 25,000 tons	6
10,000 tons to 25,000 tons	15
5,000 tons to 9,999 tons	10
Under 5,000 tons	37

Source: Returns made by the dealers to the Director, together with oral evidence.

In 1952, of the 68 dealers - 37 were engaged exclusively in the sale of coal and wood. For 9 others, coal sales constituted more than 50% of their business. The remainder were primarily engaged in a variety of activities, including trucking and contracting and the sale of oil, building supplies, lumber, gravel, brick and tile, hardware, gasoline, bakery products, wholesale coal and lime, and one dealer, Hudson's Bay, operated a department store. Referring

to this situation, the Director made in the Statement of Evidence the following comment: ". . . for a number of these [dealers] a coal business serves to keep labour and equipment employed and organizations intact during the winter season when the other parts of their businesses are quiet".

The accuracy of the latter statement was challenged during the hearing. Counsel maintained that the main reason why some of the dealers went into other lines of business in addition to coal, was the poor profit situation as far as the coal business was concerned. There is some evidence to support this contention, but it must be remembered that in the Greater Winnipeg area practically all of the domestic coal business and much of the steam business is seasonal in character, the season running from about the end of September in one year to the beginning of May in the next, a season of about seven months duration. In the opinion of the Commission it is natural, under these circumstances, to find many coal dealers turning to other businesses during the slack season of approximately five months in each year. From their business names as well as from oral evidence and returns made to the Director, it is noted that quite a number of the Winnipeg coal dealers are also engaged in the businesses of selling lumber and builders' supplies, businesses which in that locality are complementary to that of a retail coal dealer.

CHAPTER III

THE WINNIPEG COAL EXCHANGE

1. Early History

Most of the information in the Commission's hands relating to the establishment and early activities of the Winnipeg Coal Exchange is contained in a book of minutes which was obtained in January, 1953, from the office of the present Manager of the Exchange. These minutes contain brief notes of discussions, and of decisions reached, but in some cases the only fact mentioned is that a meeting took place on a certain date.

The Exchange was organized by a group of nine Winnipeg coal dealers who met for the purpose in October, 1928. The minutes of the meeting, in addition to the nine members who attended, contain the names of five other dealers who were not present but who, the minutes state, were in agreement with the principles of the Exchange and willing to contribute to its support. At this meeting a Secretary was appointed and an Executive Committee elected. In later years the Secretary has been called the Manager. The Exchange has always been an unincorporated voluntary association of retail coal dealers in the Winnipeg area. Any dealer having a city licence has been regarded as eligible for membership.

In addition to the Executive Committee the minutes of the annual meeting held on November 6, 1930, show that a complaints committee and a membership committee had also been set up.

From the date of its organization efforts were made to increase the membership in the Exchange by inviting other dealers to join. The membership grew considerably but between 1928 and 1935 there were probably never more than forty active members at any one time. However, the membership did include most of the large dealers.

It would appear that membership fees in the Exchange have never been uniform. At first the fees payable by each dealer appear to have been fixed in amount but varying from dealer to dealer. For example, we find in the minutes of an Executive meeting held on September 16, 1932, that membership fees for the year were discussed and set as follows:

Alsip Brick & Tile Co.	$100	*,**
D. E. Adams Coal Co.	$250	*,**
Best Coal Co.	$100	
Arctic Ice & Fuel Co.	$250	
Braid Supply Co.	$ 50	*,**
Canadian Coal Sales Co.	$ 50	*,**
Chick Supply & Fuel Co.	$ 50	*
City Coal Co.	$100	*,**
City Lumber & Fuel Co.	$ 50	
T. P. Carver & Son	$ 50	*
J. D. Clark & Co. & Robinson's	$150	
Dominion Lumber & Fuel Co.	$ 50	*,**
T. A. Duncan	$ 50	
Empire Coal Co.	$250	
Halliday Bros.	$250	*,**
Harstone Coal Co.	$250	*,**
Thos. Jackson & Sons	$250	*,**
Kildonan Ice & Fuel Co.	$ 50	
J. S. Miller	$ 50	*,**
Alex McCullough & Sons	$150	
McCurdy Supply Co.	$100	*,**
Northland Coal Co.	$200	*,**
D. Swail	$ 50	
Swail Bros.	$100	
Swail Coal & Cartage Co.	$ 50	
Windatt Coal Co.	$200	*,**
Winnipeg Supply & Fuel Co.	$250	*,**
D. D. Wood & Sons	$200	*
Winnipeg Lumber & Fuel Co.	$ 50	
Jno. Gunn & Sons	$ 50	
Claydon & Co.	$ 50	*,**
Notre Dame Fuel Co.	$ 50	
Caledonian Coal Co.	$ 50	
Toupin Lumber & Fuel Co.	$ 50	*,**
H. Mazerovsky & Sons	$ 50	*
Union Fuel & Supply Co.	$100	*,**

This list appears to indicate a minimum fee of $50 and a maximum of $250 with variations in $50 steps.

The list may not be entirely accurate, as the minutes of the annual meeting of the Exchange held only four days previously contain a note that the Arctic Ice & Fuel Co. Ltd. was not a member of the Exchange though it had made a contribution towards its expenses. It may be noted that the minutes of the Executive meeting of October 5, 1932, suggest that Alsip Brick, Tile & Lumber Co. Ltd. was not then a member of the Exchange though the minutes of the meeting of September 16, show that firm as being charged a membership fee of $100 for that year.

The minutes of the Executive meeting from which the above list was taken also record that "it was thought advisable to approach the smaller dealers and try to get what we could from them, first suggesting the sum of $25, in payments to suit convenience." A few weeks later at a meeting of the Executive on October 5, 1932, the minutes record that several small dealers had indicated their willingness to contribute amounts varying from $10 to $25, with one dealer agreeing to contribute $50. There is nothing in the minutes of either meeting that indicates whether dealers contributing less than $50 were to be regarded in any sense as being members. The minutes of an Executive meeting held one year earlier on September 18, 1931, show that a minimum fee had been fixed at $50 per year. None of those who agreed to contribute smaller amounts in 1932 are recorded as having attended any meetings around that time. It may well be, therefore, that such small contributors were not regarded as being active members.

It may be noted that the minutes of the annual meeting of September 12, 1932, record that the President of the Exchange in his report stated that the Hudson's Bay Co. had promised co-operation but that it was not a member of the Exchange.

The asterisks placed beside each name in the foregoing list of members in 1932, are intended to indicate information obtained by the Director during the inquiry either from returns filed by the dealers or from documentary or oral evidence. One asterisk placed beside the name of a firm indicates that it or its successor was still in business in June, 1953. Two asterisks placed opposite the name indicates that the dealer was a member of the Exchange in June, 1953.

A year later, as appears from the minutes of a meeting of the Executive held on October 4, 1933, a new system of computing fees was adopted, based roughly on the tonnage sold during the previous year. Since that time the fees payable by members have been fixed on the above principle. In practice a budget of the estimated expenses of the Exchange for the coming year is made up, the tonnage sold by each of the dealers during the previous year is obtained and the amount required to meet the budget is divided among the various members in proportion to their previous year's sales.

The business of the Exchange has been carried on largely through meetings, either of the full Exchange membership or of the Executive committee, with some matters being dealt with by other committees appointed from time to time.

The minute book referred to at the beginning of this chapter covers the period from October, 1928, to July, 1935. It is possible that it does not contain a record of all the meetings held, e.g., the only meeting recorded for 1930 is the annual meeting of the Exchange. The total number of meetings held in each year, as shown

by the minute book, is as follows:

1928	-	10
1929	-	8
1930	-	1
1931	-	22
1932	-	31
1933	-	35
1934	-	38
1935	-	8

After 1930, most of the minutes relate to Executive meetings. Their dates indicate that it was customary to hold meetings about once a week during the heating season.

For the period between 1935 and 1946 minutes of only one meeting were obtained, that being a meeting of May 12, 1944. However, documentary evidence, as well as the oral evidence of witnesses examined during the inquiry, indicate that throughout this period the Exchange continued to hold meetings.

For the period between 1946 and the commencement of the inquiry in January, 1953, minutes of many of the meetings held were obtained.

Examination of all of these minutes shows that at meetings of the Exchange, from its beginning, various aspects of the retail coal trade were discussed and that the chief item discussed was retail prices. Price lists were distributed by the Exchange from its formation in 1928.

The minutes of a number of meetings recorded in the minute book show that in the period down to the end of 1934, a good deal of attention was given to the question of co-operation with the wholesale trade in coal and that meetings were held from time to time with wholesalers for the purpose of seeking their co-operation in the efforts of the Exchange to regulate aspects of the coal trade in Winnipeg.

2. Current Membership and Organization

(a) Membership in 1952

According to Exhibit AD-8 filed by the Manager of the Winnipeg Coal Exchange the following 39 firms were members of the Exchange in 1952:

Adams	Jubilee
Alsip	Lambert
Banning	McCurdy
Beverley	McMahon
Braid	Miller
Capital	Moore
City Coal	Northland
Claydon	North Winnipeg Co-op.
Coal Sales	People's Co-op.
Cook	Pioneer
Crown	Simkin
Dominion	Swail
Fort Rouge	Thompson
Globe	Toupin
Hagborg	Turk
Halliday	Union
Harstone	Windatt
Irvine	Winnipeg Supply
Jackson	Wolfman
Jamieson	

The list contained in this exhibit was confirmed by returns filed with the Director by the dealers, with the exception that one dealer, Swail, stated in his return that he was not a member of the Exchange but that he "contributed financially" to the Exchange (Exhibit AR-1). However, it is clear from Exhibit AD-8 that the Manager of the Exchange regarded him as a member. According to his own evidence, he attended at least one meeting (Transcript of Evidence, p. 1913). Another firm, Hudson's Bay Co., whose name is not included in Exhibit AD-8, stated that it was not a member and was not considered by the Exchange to be a member. It is noted, however, that the Hudson's Bay Co. has made substantial annual contributions to the Exchange (Transcript of Evidence, p. 1406), and has contributed to the co-operative advertisement campaigns conducted by the Exchange (Exhibit AH-1), also the Manager of the coal department of the company has attended both executive and general meetings and taken part in discussions (Transcript of Evidence, pp. 1405, 1408-10, 1412, 1418, 1419), and voted (transcript of Evidence, p. 1416), and submitted cost information to the Exchange (Transcript of Evidence, pp. 1407, 1408).

(b) The Officers, Board of Directors and Committees

The Officers of the Exchange are the President, Vice-President, Treasurer and Manager, the latter being a paid official. The President usually serves for two years. The present Manager, A. H. Brett, was appointed in 1940, and continued as such until 1946. He then gave up the position but was re-appointed in 1948, and has continued as Manager since that time. In addition to the officers there have been twelve directors in recent years. The officers and the

directors comprise the executive of the Exchange and include representatives of almost all of the larger dealers in the trade together with a few small dealers.

The following list of officers and directors of the Exchange for the years 1949 to 1952 has been compiled from information set out in Exhibit AD-8, which has been referred to. The name of the firm to which each person belongs has been added:

President:	G. Galbraith (Northland), 1949, 1950
	W. Kerby (Capital), 1951, 1952
Vice-President:	W. Kerby (Capital), 1949, 1950
	S. Simkin (Simkin), 1951, 1952
Treasurer:	H. Wallace (Windatt), 1949-52
Directors:	J. B. Baillie (Jackson), 1949-52
	J. H. Holmes (Red River), 1949-51
	* T. A. Duncan (Duncan Coal Co.), 1949, 1950
	E. A. Hagborg (Hagborg), 1949-52
	M. A. Mitenko (Adams), 1949-52
	J. Mowat (Fort Rouge), 1949-52
	** E. Rose (Harstone, Union, Moore), 1949-52
	S. Simkin (Simkin), 1949, 1950
	R. Vidler (Winnipeg Supply), 1949-52
	P. Hawkins (McCurdy), 1949-52
	J. Puchniak (?), 1949
	J. S. Miller (Miller), 1949-52
	R. Irvine (Irvine), 1951, 1952
	E. Cook (Cook), 1951, 1952
	S. Wolfman (Wolfman), 1952
	G. Galbraith (Northland), 1951, 1952

* Went out of business in 1950 (Evidence, p. 2405)

** Sometimes alternated with B. Rosenblat, the President or co-owner of each of the three firms.

The Executive or the Executive Committee of the Exchange consists of the officers and the directors.

From time to time the Exchange has appointed various committees to deal with specific problems. Thus in the minutes for the annual meeting held on May 8, 1947, there are references to a sports committee, a standards committee, membership committee and an ethics committee, also an advertising committee. One important committee which was appointed periodically was the "costs" or "price committee" whose duty it was to collect information on dealer costs for the purpose of obtaining the average cost of handling coal

(Transcript of Evidence, pp. 633, 639-40, 644-5, 1427, 1433).

(c) Manager

As already mentioned the Manager is the permanent paid official of the Exchange. At least during the years Mr. Brett has held that position a good deal of the business of the Exchange has been carried on either by or through the Manager, who naturally, has been subject to instructions from the Exchange as a whole or its Executive. The Manager arranged for, and usually called, general and executive meetings, prepared the agenda, and kept the minutes of the meetings, although it should be noted that the minutes were not kept in a completely organized fashion. He assisted in preparing the annual budget, kept a roll of members, collected tonnage reports from them, and assisted in the work of setting the membership fee. He also acted as the agent of the Association in collecting membership fees. From time to time he distributed circulars dealing with matters affecting the coal trade and also with the social activities of the Exchange. He actively assisted in collecting cost data and working out the formulae to be applied to the mine prices, and prepared and distributed the Price Guides and amendments thereto. He kept a record of coals, showing a break-down of costs and retail prices. He took an active part in preparing the co-operative advertising programme. Generally speaking, he kept the dealers supplied with up-to-date price information. Mr. Brett also worked actively with a group of dealers who were concerned with the allocation of steam contracts obtained on tender. It should be noted, however, that Mr. Brett's own evidence (Transcript of Evidence, pp. 1055-56), and the evidence of Mr. Hagborg, one of the dealers (Transcript of Evidence, p. 2404), was that whatever he did in this connection was done solely in his private capacity and not in his capacity as Manager of the Coal Exchange.

(d) Meetings and Activities

It would appear that during the last few years general meetings of the Exchange have not been held at all frequently. In one year, 1952, the only general meeting was the annual meeting held in May of that year. Meetings of the Executive were held much more frequently although not with any regularity. The evidence indicates that during the heating season the Executive met about once a month. We find, for example, that in 1951 there were at least seven Executive meetings and five or six in 1952. The evidence also shows that all of the members of the Exchange have attended either general meetings or Executive meetings, with the exception of the following five firms: Banning, Coal Sales, Globe, McMahon and Turk. However, these firms have maintained their membership by paying membership fees. They have also paid their advertising assessments and have received the Price List Guides and circulars issued by the Exchange.

Discussions at the general and Executive meetings ranged over quite a wide variety of subjects relating to the retail coal trade e.g., co-operative advertising, summer stocking of coal, credit, stoker service, municipal by-laws, costs, price changes, standards, ethics, membership, the Price List Guide and also sports.

(e) Sales Position of Members of the Exchange

From returns filed by the dealers with the Director and from oral evidence it appears that in 1952, the members of the Exchange (including Swail) plus the Hudson's Bay Co., in all a total of forty coal dealers, sold about 639,600 tons of coal or about 88% of all the coal, approximately 723,000 tons, sold at retail in Greater Winnipeg by the 68 dealers concerned in this inquiry. As stated previously, these 68 dealers sold practically all the coal that was sold at retail in Greater Winnipeg in that year. In that year also the dealers represented on the Executive Committee of the Exchange (plus the Hudson's Bay Co.) sold about 2/3 of all the coal sold at retail in Greater Winnipeg.

CHAPTER IV

EARLY ACTIVITIES RELATING TO TRADE

The evidence relating to Exchange activities in the period from its formation in 1928 down to the end of the Second World War is far from complete. From 1928 to 1935, it is found chiefly in the book of minutes referred to in Chapter III. From 1935 to 1946, minutes of only one meeting (May, 1944) are before the Commission. It should be noted also that none of the minutes for this period are signed, with the exception of minutes of a few of the meetings held in the years 1931 to 1934, when Mr. A. G. McCurdy was President. Minutes of meetings subsequent to 1946 are likewise unsigned, except for the annual meeting in June, 1951, when Mr. W. F. Kerby was elected President.

While the minute book from 1928 to 1935 contains a very incomplete account of the matters dealt with at meetings, it does indicate some of the matters with which the Exchange was concerned.

1. Price Lists

Price Lists, or Price Guides as they were later described, were prepared and issued by the Exchange from its formation in 1928, as appears from the minutes of a general meeting of November 19 of that year:

> "Decided that new Price List should be issued with addition of certain grades of coal not shown on old List. . . . No price to be listed on Souris Stove or Nut. Secretary and D. King to decide which firms should receive copies as no charge made for same."

(Exhibit 4190)

The minutes of three meetings in 1934 record decisions for changes in the Price Lists and for issuing new lists.

(Exhibits 4256, 4260, 4265)

One witness stated that he had copies of Price Lists in his firm's office leading back to 1928 (Transcript of Evidence, p. 1446)

From this and other evidence, including many exhibits, it is clear that throughout its history the Exchange has continued to hold meetings, and to prepare and issue Price Lists. These Price Lists

(or Price Guides) are normally issued at or near the beginning of the heating season in each year. Lists are also issued during the heating season if the Exchange decides upon a change in price. Separate Lists are usually issued for "steam" business and "domestic" business.

2. Prices

For the period from 1928 to 1935, the minutes contain a number of references to price discussions. The first of such references is found in the minutes of a meeting on November 14, 1928, and reads as follows:

> "Chairman invited discussion of situation in respect to local deliveries of Steam Coal, particularly Pocahontas,ROM & Scrgs. An expression of opinion was taken from each member present and prices were shown to be widely varied. After considerable discussion it was decided to give this matter further consideration and Secretary was instructed to arrange for a Dinner & Meeting at 6.30 on Monday, Nov. 19th at which time further consideration should be given to matters on hand and, if possible, a solution arrived at."

(Exhibits 4187-88)

The meeting arranged for November 19, 1928, was attended by 17 persons, representing 16 firms, in addition to the Secretary. Further discussion of the above matter is reported as follows:

> "Discussion of present prices of Pocahontas Coal was resumed. After everyone present had stated views and matter was fully considered, decided to continue selling at present prices, regardless of lower quotations on inferior coal. No new business to be taken on at prices below List quotations. Everyone present inclined to think that present figures were fair and reasonable for coal of proper quality."

(Exhibit 4189)

Obviously the members of the Exchange were concerned about the varying prices, apparently lower than List, at which Pocahontas steam coal was being sold. Those present at the second meeting decided that they would, nevertheless, maintain List Prices and not take on any new business at prices below List quotations.

The minutes of seven meetings held between October 14, 1931,and February 3, 1932, show instances of certain dealers advertising and selling certain kinds of coal and coke at lower than List

Prices. They indicate a desire to keep the dealers in line with List Prices, and at the last two meetings it was considered advisable "to maintain present prices for the balance of season".

(Exhibits 4219, 4218, 4220, 4221 and 4223)

Premiums and discounts were discussed at an Executive meeting on October 5, 1932:

> "Some comments were made regarding the Capital Coal Co. ad re Monogram Coal being offered with a set of dishes. Secretary was asked to see Better Business Bureau to get their views on this form of advertising. The question of cash discounts and cut prices was discussed in connection with Miller Bros. and J. Dalenger and it was thought that these should be discouraged, also the practice of giving bags of wood with each ton of coal or coke . . .
>
> Secretary reported D. P. Smith asking in regard to premiums. It was considered that calendars, thermometers, etc., given to customers, was quite in order but that premiums given away as an inducement to purchase coal were not allowable."

(Exhibit 4232)

A further reference to discounts is found in the minutes of an Executive meeting of October 24, 1933:

> "Reported one firm canvassing city police & possibly firemen at 50¢ off. Denied by Manager."

(Exhibit 4243)

The minutes of several meetings indicate some degree of agreement on prices. For example, in the minutes of a general meeting of June 8, 1934, we find:

> "Discussed price on restaurant coal on account of lower subvention. Price to be $8.75 per ton."

(Exhibit 4247)

And from the minutes of a special general meeting of August 20, 1934:

> "Special General Meeting re prices which were agreed on. McCurdy, Harstone and Brand a committee to consider open business."

(Exhibit 4247)

The same exhibit records that the committee met on August 22, 1934, to check prices and consider open business. Open business was described in evidence as contract business with the government or such large plants as hospitals, on which there was no understanding about prices and on which the dealers could quote any figure they liked (Transcript of Evidence, pp. 1442-45).

And again, from the minutes of a general meeting of October 26, 1934:

> "Dealers were requested to co-operate with the Exchange before pricing new coals so as not to disturb the present price structure. Secretary was instructed to get in touch with those who were not present to secure their co-operation. New coals mentioned were -- Ajax, Sheebo, Victory. It was decided that these coals should bear the same margin as Drumheller."

(Exhibit 4260)

And again, from the minutes of an Executive meeting of December 3, 1934:

> "The matter of 'club' or 'group' buying was brought up, the statement being made that it was increasing. The Exchange was very much against this class of business and had passed a resolution condemning same and requesting its members to cut it out. It has been going on for so long that it is very difficult to deal with but every effort should be made to have it discontinued."

(Exhibit 4266)

By "Club" or "Group" buying was meant an arrangement under which all or a certain number of members of the "Club" or "Group" would buy their coal from a particular dealer and be given a discount for so doing.

3. Observance of Prices

From the minutes of this early period it is clear that the members of the Exchange were concerned about price-cutting, that such matters were discussed at meetings, and that some efforts were made to bring into line dealers whose prices deviated from the Price List. The first example is found in the minutes of a general meeting of December 3, 1928, from which the following extracts are taken:

> "Several matters were discussed in connection with sales, viz.:

Report of DD Wood re Union Loan & Inv. Co.
Poca Scrgs from Arborg Fuel Co.

Sale by Despatis Bros. coke, Wpg. Electric at 14.75 reported by B & McCurdy.

Sales by Wpg. Coke & Coal to certain blocks in North End reported by J. D. Clark.

. . .

Reported by Empire Coal. Exeter Court. Northland Coal Co. Poca ROM at 10.00. Royal Trust.

. . .

Reported Caledonian Coal Co. preparing advt. Newcastle Coal. Stove Nut at 8.25

Toupin Coal reported Saunders Ridge coal sold by Rousseau at 13.50, Stove 12.50."

(Exhibits 4192-93)

The minutes of an Executive meeting of September 16, 1932, contain the following:

"Secretary was instructed to call attention of Halliday Bros. to price on Drumheller stove coal."

(Exhibit 4231)

Another example is found in the last item of the minutes of a general meeting of September 7, 1934, as follows:

"McCurdy reported cut prices on Souris stove to LaSalle Hotel, to be investigated."

(Exhibit 4254)

Twelve days later a meeting of the Executive was held, the minutes of which contain the following two successive items:

"Suggestion was made that we follow a plan adopted in Saskatoon to have all dealers sign an agreement to maintain prices and to cut out premiums in connection with sale of coal, held over for present.

Mr. Harstone reported several check-ups that had been made and adjusted."

(Exhibit 4256)

4. Co-operation with Wholesalers in Maintaining Prices

The minutes for the period 1928 - 1934 show that a number of meetings were held with wholesale coal dealers in Winnipeg, and that their co-operation was sought in connection with the efforts of the Exchange to maintain prices. The minutes of one such meeting, held on February 20, 1929, contain the following:

> "Suggestions as to duties of retailer in return for co-operation of wholesaler, Decided to try and organize a wholesale section."

(Exhibit 4200)

Again in September, 1931, the Exchange was concerned about activities of three dealers, Swail, Arctic Ice, and Hudson's Bay, these activities quite apparently having to do with prices and also with the sale of a second grade Drumheller coal. A series of five or six meetings, one with wholesalers, was held during the last nine days of the month to deal with this matter. The minutes of a special meeting of members on September 28 indicate that some progress had been made:

> "C. C. Robinson reported re Arctic Ice & Fuel Co. which was considered satisfactory. Other matters re prices discussed."

(Exhibit 4215)

The minutes of another special meeting of members, two days later, report that a meeting had been held "with W. Mulock and R H. Cheshire", who appear to have represented Arctic Ice and Hudson's Bay. According to the minutes, these gentlemen had indicated their willingness to co-operate with the Exchange and also support it financially. It is also indicated that there would be no second grade Drumheller recognized by them or the Exchange and that these dealers were as anxious as anyone to hold prices steady and had agreed to assist the Exchange to that end.

(Exhibit 4214)

Another example of joint discussion with wholesalers is found in the minutes of a meeting of the Executive with wholesalers "in the matter of co-operation and other matters". These minutes are undated but, from the context, it would appear that the meeting was held between October 15 and October 26, 1934:

> "The matter of Edmonton coal being on the price list and not being adhered to was mentioned and the Chairman stated that this was being attended to.

> Meeting very agreeable and there seemed to be a disposition to co-operate."

(Exhibit 4261)

These extracts and others that might be quoted from the minute book for this period indicate that the purpose of the Exchange in seeking to obtain the co-operation of wholesalers was to secure their support in maintaining the prices and policies of the Exchange. It should be noted, however, that nowhere in the minutes is there any reference to any specific action on the part of wholesalers being asked for or taken. In oral evidence the manager of Superior Coal stated that during the depression, in the early 1930's, his supplies had been cut off by wholesalers because he was cutting prices.

(Transcript of Evidence, pp. 287-290)

5. Allocation of Tenders

During the pre-war period the exact position taken by the Exchange and its members towards large contracts is not clear, though it is obvious that they were regarded as being in a special price category. For example, the minutes of a special meeting on April 8, 1929, state:

> "Special meeting held at 220 McDermott to discuss contract for Crescent Creamery Co. . . . Dealers present considered price offered by one dealer, 8.50 per ton, for Poca Screenings, was a fair and reasonable price, without any guaranteed analysis. One or two declared they would ask a higher price for a good quality of coal. No dealer appeared willing to take contract at any lower price in view of the possible higher cost of coal during the season."

(Exhibit 4201)

Again on May 27, 1929, a meeting was held and another arranged for May 29, both "to consider contract for Wpg. Municipal Hospital".

Some time about 1934 certain "steam" accounts began to be referred to as "open list" business. Thus in the minutes of a special general meeting held on August 20 of that year there appears the following entry:

> "McCurdy, Harstone and Brand a committee to consider open business."

(Exhibit 4247)

The committee met on August 22 (Exhibit 4247), and on August 30 the Executive committee recommended that a specified list of accounts be the open list (Exhibit 4253).

On September 7, at a general meeting, the recommended list was amended and adopted, the minutes including: "Open Business List as attached".

(Exhibit 4254)

The attached list reads as follows:

"OPEN LIST FOR STEAM COALS.

Provincial Gov't Buildings

Dominion Gov't Buildings

All Public & High Schools in
Winnipeg, St. Boniface, St. James

Hospitals-Winnipeg General,
Misericordia, St. Boniface and
its affiliated institutions

The T. Eaton Co. Ltd.

Manitoba Free Press

Crescent Creamery

Canada Bread Co.

Breweries-Drewery's & Shea's

Canada Cement Co.

Winnipeg Electric Co.

Marlborough Hotel

S. S. Kennedy Heating Co.

NOTE- All apartment block,
stores and rental agency business
is definitely on the closed list,
subject to the regular price list."

(Exhibit 4255)

The note at the bottom of the list, by stating that "All apartment block, stores and rental agency business is definitely on the closed list, subject to the regular price list.", clearly indicates that accounts in the "Open List" were not subject to the regular Price List and that deviations from regular prices were authorized for such accounts.

The "Open List" was discussed at subsequent meetings. It was still in existence in 1939. By this time there were two special classes of steam coal accounts. The first, comprised mostly of those named in the above quoted list, apparently let contracts for coal on tender. The second comprised laundries, dry cleaners, bakeries, dairies and creameries and were described as "industries using large quantities of coal the year round" or "year round users" (Exhibit 311).

On Exhibit 311 there is a similar note to that quoted above from Exhibit 4255. It reads:

> "Note -- All apartment blocks, stores and rental agency business as well as other plants using steam coal delivered in load lots are subject to the regular steam coal list."

Summary of the Pre-War Period, 1928 - 1939

The evidence relating to the Pre-War Period from 1928 to 1939 is fragmentary. The minute book from which the evidence was chiefly obtained does not contain a clear and unequivocal record of what transpired with respect to most of the matters discussed, nor of specific steps taken or the reasons therefor. Further, the minutes of a great majority of the meetings are unsigned. However, unsatisfactory as the evidence is, the Commission believes that certain facts clearly emerge, viz.:

(a) The preparation, issuance and circulation of Price Lists by the Exchange, separate lists for "domestic" business and "steam" business.

(b) The desire of the Exchange and its members to maintain "List" Prices, the discussion at meetings of instances of price-cutting, and some instances of discussions with price-cutters resulting in satisfactory adjustments being made.

(c) The seeking of co-operation of wholesalers to support Exchange policies and prices.

(d) The discussion of at least two specific large contracts, and the development of an "Open List" of customers whose accounts were recognized as not being subject to List Prices.

On the other hand there is little or no evidence as to the extent to which List Prices were observed by dealers in this period, as to the percentage of the coal market enjoyed by members of the Exchange, as to any control over that market by the Exchange or its members, or as to any actual steps agreed upon or taken by any wholesaler in support of Exchange policies or prices. The evidence of the only case (Superior Coal) in which it was stated that a dealer's supplies had been cut off by wholesalers is very indefinite as to time, inconclusive in content, and unsupported by any other clear evidence.

The Period of Wartime Controls

Following the outbreak of war in 1939, a Coal Administrator was appointed. After December 1, 1939, all coal dealers were required to be licensed and to submit monthly reports to the Administrator showing details of sales and prices. In December, 1941, full wartime price controls were imposed and from that time till April, 1947, retail prices of coal were regulated by the Federal Government. Price controls on coal were terminated on April 16, 1947, by Wartime Prices and Trade Board Order No. 711.

During this period of wartime controls the Exchange continued to issue Price Lists whenever price changes were authorized by the W.P.T.B., and passed on to dealers instructions contained in Orders of the Board concerning price changes.

(Exhibits 325, 328, 331-8, 344-5, 347-9, 351-2, 359-61, 1720, 1723, 1908-10, 1920-1, 1942-3, 1948, 1950-1)

It is clear that the Exchange organization remained intact throughout this period and continued to function within the limits set by the control regulations.

CHAPTER V

EXCHANGE ACTIVITIES IN THE POST-WAR PERIOD

1. Price Guides

The function of issuing Price Lists, which began with the formation of the Exchange and was continued during the period of war-time price controls, has been exercised since the removal of controls in April, 1947, at least down to the date of this inquiry. In recent years these Price Lists have been described as "Price Guides" or "Price List Guides", apparently to emphasize their non-obligatory character. In this connection, on a number of occasions when circulars have been issued to the trade the Exchange has taken pains to point out that the prices shown in the Price Guides were not compulsory. A typical example is a circular dated July 28, 1952, signed by the President of the Exchange and sent to the trade together with new Price Guides, the circular including the following statement:

> "We wish again to emphasize the fact that the prices contained in the Price List Guides are arrived at as a result of comprehensive studies made and supplied only as a convenience to the retail dealers. The Coal Exchange does not set or enforce prices."
>
> (Exhibit 4788)

The practice of the Exchange has been to prepare Price Guides each year, issuing them, before the opening of the heating season, to every licensed coal dealer in Winnipeg, whether a member of the Exchange or not. New Price Guides have been issued at other times if changes in freight charges, mine prices or handling costs seemed to make that course desirable. In addition circulars dealing with the price of particular coals have been issued from time to time.

The Price Guides issued by the Exchange consist of two lists, the domestic list and the steam list. The domestic list applies to householders who buy relatively small quantities of coal during the season and usually take delivery of from one to three tons at one time. It contains delivered prices per ton, half ton and quarter ton of the standard coals sold to householders in Greater Winnipeg. This coal is normally delivered in sacks. The steam list applies to commercial establishments, office buildings, hotels, apartment blocks, steam plants and other buildings which require fairly large quantities of coal

during the heating season, usually taking delivery in bulk and in larger quantities at one time than do domestic consumers. It contains prices per ton, which prices are lower than those in the domestic list for the same coals because of lower dealer handling costs.

The evidence of several witnesses establishes that the practice is for the Price Guides to be compiled and distributed by the Manager of the Exchange on instructions either of the Executive or of a meeting of members of the Exchange, preceded by cost studies and recommendations made either by a prices committee or sometimes by the Manager.

Since 1946 the Exchange has endeavoured to arrive at the prices set out in the Price Guides on the basis of a cost formula, intended to reflect real expenses incurred by the dealers plus a certain margin of profit. The origin of this development is found in 1946, while price controls were still in effect. Members of the Exchange felt that increasing costs made higher retail prices necessary at that time. At a meeting of the Exchange on June 26, 1946, it was decided to seek the services of a lawyer or chartered accountant to make a survey of dealers' costs in support of an application to the Wartime Prices and Trade Board for an increase in coal prices in the Winnipeg area (Exhibit 4282).

The proposed survey was made by Sharp, Woodley & Company, Chartered Accountants, who reported thereon to the Exchange in a memorandum dated October 10, 1946 (Exhibits 1849-54). The report was based on a survey of the operations for the fiscal years 1940 and 1945 of eight member dealers, varying in size from the largest to quite small firms, who between them sold about one third of the total tonnage consumed in Winnipeg.

From the evidence of several witnesses it is clear that several elements enter into the total costs incurred by coal dealers. These were generally described by witnesses as follows:

(1) The mine price of the coal per ton.
(2) The freight charges per ton from the mine to the dealer.
(3) The dealer's handling costs per ton.
(4) Losses arising from loss of weight and degradation of the coal during delivery to and storage and handling by the dealer.

When all of these costs have been added up it is obvious that over and above the total thus arrived at, the dealer's selling price must include a fifth item by way of profit margin if his business is to show a profit on his operations.

At an Executive meeting of the Exchange held April 3, 1947, it was "suggested that for a guide 4% gross profit be considered

as a fair margin to be instituted with effect from April 16, 1947" (Exhibit 4338). The evidence of witnesses, as well as documents showing cost and price studies, makes it clear that by "4% gross profit" was meant 4% of the dealer's selling price, and the amount to be included in the price by way of profit has been calculated as 4.17% of the total of all the foregoing costs. The prices listed in the Price Guides issued by the Exchange since that date have always contained this 4% profit allowance.

The mine price and freight charges are factors over which the dealers have no control. Increases in price to balance cost increases under these heads had been allowed from time to time by the Wartime Prices and Trade Board. What Messrs. Sharp, Woodley & Company were chiefly concerned with were the dealers' handling costs. Their report contained a break-down of dealer operating costs for the eight dealers for the fiscal years 1940 and 1945 under the following headings:

Delivery and Yard Expenses:

Wages, Gas, Oil, Repairs,
Depreciation, etc. [These were apparently delivery items]
Yard Wages
Yard Expenses
Sundry Expenses

Overhead Expenses

Salaries - Management, Salesmen and Office
Advertising
Depreciation
Rent or equivalent
Taxes - Property and Business
Other Expenses

(Exhibits 1852-53)

The survey showed that the average unit cost of handling figures of the eight dealers in the two years were as follows:

1940:	Total Delivery and Yard Expenses	-	$ .89
	Total Overhead Expenses	-	.86
	Total All Expenses	-	1.75
1945:	Total Delivery and Yard Expenses	-	$1.48
	Total Overhead Expenses	-	.76
	Total All Expenses	-	$2.24

The report states that these averages were calculated on the total units of fuel sold, which means that the figures just quoted are weighted averages of the eight dealers' costs.

An application for an increase in retail prices for coal was made to the Wartime Prices and Trade Board, supported by a brief prepared by Sharp, Woodley & Company, based on their report. In the result, the Winnipeg coal dealers were authorized to raise the price of coal by 30 cents per ton, effective December 16, 1946 (Exhibit 1952), and new Price Lists issued by the Exchange, dated December 16, 1946, reflect the authorized increase.

(Exhibits 359-60, 1953-54)

In the years subsequent to 1946 the Exchange has not engaged special acounting services to make studies of the cost of handling the various kinds of coal. Instead, in each year the Exchange has conducted its own cost studies (Transcript of Evidence, p. 2335). The information on which the cost studies have been based has been obtained in the following manner. The Exchange sends to some 15 or 20 dealers, whose cost accounting is deemed to be sufficiently accurate for the purpose, expense forms for completion and return to the Exchange office. These forms group costs under three main headings, viz., Overhead, Yard Expense and Delivery, with a number of items to be specified under each heading. Not all the dealers return completed forms, but a number do so. The information contained in the forms is studied and a weighted average worked out. The evidence indicates that in arriving at the average, the cost figures of any dealer which are very much higher or very much lower than the general run are ignored.

These weighted average handling costs include the costs for both domestic and steam coal, the actual handling costs for the two being very different. It is apparently thought that the handling costs of domestic coal are about double those of steam coal, because in preparing the domestic Price Guides the handling cost figure is arrived at by adding one-third to the average figure resulting from the cost studies and in preparing the steam Price Guides one-third is subtracted from the average handling cost figure. This is an arbitrary division between domestic and steam coal, but Mr. Brett, Manager of the Exchange, stated that "it is an odd thing, in some dealers' studies of that, how close it has come out to their actual practice, that is, where they have had really good costing principles" (Transcript of Evidence, p. 650).

A new cost of handling formula was developed in April, 1947, probably by a committee of four members appointed at an Executive meeting on the 3rd of that month, "to examine the existing retail margins and further suggested that for a guide 4% gross profit be considered as a fair margin to be instituted with effect from April 16, 1947" (Exhibit 4338, already referred to). There is no evidence as to what methods were used and in particular whether a cost survey was made for the purpose of determining the various cost items. However, data for cost of handling items and all other costs together with a 4% allowance for profit and the final price thus arrived at, in

respect of 16 domestic and four steam coals, are found in three similar documents obtained from the files of Jackson and Hudson's Bay (Exhibits 1960-61, and 1856). Apparently the data in these documents were largely adopted, because in new Price List Guides issued effective April 16, 1947, (Exhibits 363-64), we find that prices for 17 of the coals referred to in Exhibit 1960 (also in Exhibits 1961 and 1856) are listed and that for 12 of them the prices are the same as in Exhibit 1960.

The first survey of handling costs made directly by the Exchange, of which there is any definite record, was authorized at an Executive meeting on December 19, 1947 (Exhibit 4357).

It may be noted that the report made in 1946 by Sharp, Woodley & Company made no mention of expenses arising from degradation or loss of weight. However, in a document found in the files of Jackson, bearing the handwritten date "Feb. 25/48" there is set out the current handling cost formula for domestic coals other than Souris and also the current formula for Souris coal. Both of these allow for degradation, 10¢ in the case of Souris and "variable" in the case of other domestic coals. The document also sets out new proposed formulae for the same groupings of domestic coals. These new formulae include, in addition to degradation, an item of 1% for loss of weight. The document further contains examples showing how the new formulae would work out in respect of several specifically named coals (Exhibits 2030-31).

A similar document, undated, was found in the files of the Exchange, (Exhibits 4660-61), and the formulae portion (without the examples) of another copy in the files of Union (Exhibit 3713).

There is no doubt that the proposed formulae were adopted and incorporated in the new domestic Price List Guides issued on March 1, 1948. All the coals listed in the new Price Guides show increases in price, and for all the coals shown in Exhibits 2030-31 as examples, the prices in the new Price Guide are exactly the same as those in the exhibits.

From that date an allowance for loss of weight as well as degradation has always been made in the prices given in the Price List Guides for domestic coal. Allowances for degradation and shrinkage have also been included in the prices shown in the Price List Guides for steam coal.

In April, 1948, the Exchange Manager resigned, effective April 30, and was replaced by Mr. A. H. Brett, who had been Manager from 1940 to 1946, and who remained as Manager from the date of his reappointment in 1948 down to the date of this inquiry. He began to keep a loose-leaf book containing a record of the price breakdowns, price changes with the dates of such changes, and the

specifications of the various coals handled by the Winnipeg dealers. This book is entitled "Coal-Price Mark-Up" (Exhibits 5534-5693 inclusive). It is referred to in this report as the "price book".

The price book lists imported and Canadian coals, showing domestic and steam break-downs leading to the selling price, and giving figures for the following faimilar items:

Degradation
Loss of Weight
Cost of Handling
Mine or Dock Price
Freight
Profit

The earliest entries in the price book are dated April 15, 1948. The specifications of various coals shown in the price book provide information for the use of dealers when quoting on large quantities of coal for steam or contract accounts.

Since the cost survey which preceded the Price List Guides of March 1, 1948, and prior to the beginning of this inquiry, the Exchange has undertaken handling cost surveys at the following times:

1. In November, 1949
2. In the summer of 1950
3. In May, 1951
4. In May, 1952.

In the survey begun in November, 1949, a new standard form, breaking down in greater detail than previously the various handling cost items, was employed. It also included a new item for depreciation on equipment. This form has been employed in all subsequent surveys. In it the various costs are broken down under three main headings, to be shown on a per ton basis:

<u>Overhead</u>

Advertising
Transportation
Bad Debts
Commissions
Depreciation on Buildings
Rent
Donations
Interest and Discounts
Legal and Audit
Miscellaneous Office Expense
Taxes
Salaries, including Shipper

Yard Expense

Bags
Depreciation on Yard Equipment and Buildings
Workmen's Compensation
Unemployment Insurance
Wages
Wood Cutting
Miscellaneous Yard Expense

Delivery

Operation of Trucks
Depreciation on Trucks and other Mechanical Equipment
Insurance
Licenses
Unemployment Insurance on Truck Drivers and Helpers
Hired Trucks.

(Exhibit 4483)

Results of the Cost of Handling Surveys and Their Disposition

It must be remembered that price changes may be due to other causes than changes in the dealer's handling costs. During the period from the removal of price controls in April, 1947, to the date of this inquiry, a number of changes in the mine price of various coals and in freight charges occurred, being generally upward changes. These were generally incorporated in the Exchange Price List Guides, either by issuing bulletins dealing with specific changes or by issuing new Price List Guides. Some changes were made also in the allowances for loss of weight and degradation and these were incorporated in the Price List Guides. Sometimes new Price List Guides reflected changes from these causes along with changes arising from cost of handling surveys. Questions concerning loss of weight and degradation will be dealt with a little later in this report. For the moment we are concerned with the use made of handling costs studies as an important element in determining prices.

April 1947 Study

Reference has already been made (p. 54) to the appointment of a four member committee on April 3, 1947, "to examine existing retail margins . . .", and to what followed. As already stated, there is no evidence as to how the committee proceeded. A few of the cost figures found in Exhibit 1960 are similar to those for the year 1945 found in the brief prepared by Sharp, Woodley & Company in 1946 for presentation to the Wartime Prices and Trade Board (Exhibits 4312-13). One important difference between the 1946 and the 1947 figures is that the net profit (or loss) position found from

the actual experience in 1945 of the dealers whose records were examined by Sharp, Woodley & Company ranges from a profit of 28¢ per ton for one dealer to a loss of 22¢ per ton for another, while for 1947 Exhibit 1960 proposes a net profit of "4% of cost", the actual figures listed for this heading being 4% of selling price. In other words Exhibit 1960 aimed at producing a net profit for the dealer of 4% of his selling price, a much better position profitwise than he had enjoyed in 1945.

As stated previously, the prices indicated in Exhibit 1960 were largely adopted in the new Price List Guides of April 16, 1947.

December 1947 Survey

Prior to the survey authorized by the Executive on December 19, 1947, Winnipeg Supply had made a study of their own cost of handling coal and had worked out an estimate of the increases in handling charges which they thought necessary. Their conclusions appear in a document headed "Calculation of Increases Needed in Retail Coal Prices - Effective October 1, 1947" (Exhibit 4831). In their opinion steam margins were satisfactory, but for domestic coal, other than lignite (Souris), they proposed an increase in cost of handling figures (Yard, Delivery, Overhead) of 58¢, and for domestic lignite 53¢, less in each case an amount of 15¢, arising from their opinion that the current Price Guide Allowance of 25¢ for bags was too high and should be reduced to 10¢ per ton.

Apparently Winnipeg Supply's proposals were not adopted at that time. However, in the minutes of the Executive meeting of December 19, 1947, we find the following paragraph:

> "A general discussion revealed that costs of handling and delivering domestic coal had risen considerably during the year and were still rising. It had been hoped that handling costs, in view of continually rising mine prices, could be kept down. The main fear was that coal would reach a price beyond the ability of the average householder to pay. While it was the unanimous feeling that prices must be kept at the lowest possible level, it was feared that the increased handling costs were forcing the dealers into quite a precarious position. The Manager was instructed to make a survey among the dealers to ascertain costs of handling today."
>
> (Exhibit 4357)

According to the President's report dated April 22, 1948, it would appear that in fact a committee was appointed for this purpose (Exhibit 2049).

As the survey progressed the Manager reported that costs had increased tremendously and that all dealers felt they would have

to increase their prices, much as they hated to do so (Exhibit 4358).

By the date of the Executive meeting of February 20, 1948, the survey had been completed. In the Minutes of that meeting we find the following paragraph:

"HANDLING COSTS

The Manager presented the meeting with the results of his survey of handling costs. Sacking, Delivery, and Overhead costs had risen invariably in all cases to a point where relief would have to [be] acknowledged. Cost figures agreed with those found to be the case with those present and much regret was expressed that it would be necessary to add to the retail price in view of the already high cost of coal to the consumer. While the increasing of retail prices was up to the individual dealer, it was felt that all realized their position with regard to handling costs and knew that an increase was absolutely essential. New price list guides were to be issued effective March 1st, the dealers to be guided by the lists or not, however they saw fit. It was stressed by the meeting that it was not the policy of the Exchange to attempt to force any dealer in any way to adhere to the lists issued by the Exchange but as the increases would be the bare minimum it was felt that they would adopt the prices in self preservation. The manager pointed out that while all dealers were against increases in their price from the angle of the ability of the consumer to pay, they were most definitely not going to stock western coals, with their high degradation, at their present margin."

(Exhibits 4359-60)

As already mentioned, a document found in the files of Jackson (Exhibits 2030-31) contains, inter alia, the current formulae and the proposed formulae for domestic coals. The details are given as follows:

"Domestic Coals With Exception of Souris

Current Formula		Proposed Formula	
Degradation -	Variable	1% Loss of weight -	Variable
Unloading	.20	Degradation -	"
Sacking	.25	Unloading	.20
Delivery	1.25	Sacking	.55
Bags	.25	Delivery	1.40
Overhead	1.02	Bags	.25
	2.97	Overhead	1.15
			3.55

Increased allowance - 58¢

Souris

Current Formula		Proposed Formula	
Degradation	.10	1% Loss of weight & Degradation	.05
Unloading	.20	Unloading	.20
Sacking	.25	Sacking	.55
Delivery	1.25	Delivery	1.40
Bags	.30	Bags	.25
Overhead	.76	Overhead	.90
	2.86		3.35

Increased allowance - 49¢"

It is not known just how the survey was conducted but it may be noted that the increased allowance of 58¢ shown in the proposed formula for domestic coals other than Souris is exactly the same as appears in the calculations made a few months earlier by Winnipeg Supply, except that the reduction of 15¢ in the charge for bags proposed by that company is not adopted in the new formula.

The proposed domestic formulae were adopted and incorporated in new domestic Price List Guides, effective March 1, 1948 (Exhibits 2035-36).

The minutes of meetings held prior to and during the survey of costs make it clear that the Exchange members felt that an increase in handling charges had become necessary. They also suggest a clear inference that the members felt that in making any such increase they should act together and by means of a cost of handling survey. In this connection there is some evidence that during this period Winnipeg Supply sought to obtain the approval of at least some other dealers for the price increases it had proposed. It would also appear that Winnipeg Supply accepted the new domestic list prices, which were 15¢ higher than the company had deemed necessary, as Mr. Vidler, the company official in charge of retail fuel sales, stated that the company's own Price Lists, used by their salesmen, did not deviate from the prices shown on the Exchange Price List Guides, (Transcript of Evidence, pp. 1074-75).

November 1949 Survey

While a number of price changes appear in circulars and Price List Guides between March 1948 and November 1949, chiefly occasioned by changes in mine prices, it was not until the latter month that a new survey of handling costs was undertaken by the Exchange. The rising cost of labour and the desire to include in the cost of handling formula some provision for depreciation on equipment (trucks, conveyors, loaders, etc.) were the basis for this survey, which was

put in motion by a circular dated November 17, 1949, issued by the Exchange Manager (Exhibit 4482).

In response to this circular a number of dealers sent in estimates of their costs, as would appear from a document found in the files of Jackson (Exhibit 2279), bearing the handwritten date "Dec 15/49", a copy of which was found in the files of Hudson's Bay (Exhibit 1876). These documents indicate an average cost of handling figure (for both domestic and steam) for seven dealers of $2.91 at that date, a handwritten notation on Exhibit 2279 stating, "2.67 Average Last Spring." Apparently, therefore, an increase of 24¢ in average costs had taken place. However, for reasons not disclosed by the evidence, a new cost of handling formula was not adopted to cover the increased costs. One increase was made. The cost of handling formula for lignite (Souris) coals, both domestic and steam, was brought up to that in use for other coals. This appears from a circular dated December 19, 1949, issued by the Manager of the Exchange:

"The Price List Guide (Basis of Mark-up)

As you are aware, the Coal Exchange has for several years been making studies of the cost of doing business. In making up the price list guide, overhead, yard expense and delivery expenses used are the result of average figures obtained from a number of dealers. When all expenses are taken into consideration, an attempt has been made to formulate the prices suggested so that 4% net on gross sales could be attained.

In spite of efforts made, it is questionable whether any Winnipeg dealer has achieved the 4% objective. There are various reasons for this. One: that steadily increasing costs of labor, equipment and other unseen factors always seem to be one jump, at least, ahead of the studies made. Another very important cause is that due to misconceptions inherited from the past, it has been considered possible to handle a ton of Saskatchewan Lignite more cheaply than a ton of other coal. This fallacy has been completely routed by the research work we have undertaken, and it would seem only just that all coals be placed on the same basis, allowing only for the differences in degradation and loss of weight.

The result of these recent findings is that on January 3, 1950, Saskatchewan Lignite will be listed in our price list guide as follows:-

SASKATCHEWAN LIGNITE - STRIP

		1 Ton	1/2 Ton	1/4 Ton
(Domestic)	All Sizes	8.50	4.75	2.85
	Oil treated	8.75	4.85	2.95
(Steam)	All Sizes	6.65		
	Oil treated	6.90"		

(Exhibit 2280)

From the figures in the price book (Exhibits 5621 and 5668), it is easily seen that the former and the new cost of handling charges for Souris coal were as follows:

Cost of Handling	Domestic	Steam
Old charge	3.35	1.71
New charge	3.55	1.76

There is nothing in the available evidence concerning the cost survey to show why Souris coal handling charges should be singled out for an increase. Exhibit 2279 indicates on the contrary that a general increase applicable to all coals might have been expected.

August 1950 Survey

In August 1950, apparently following a meeting, notice of which stated it was to be held on August 9 (Exhibit 3944), another survey of coal handling costs was made. The available evidence as to cost figures used in this survey may well be incomplete. The only cost figures found in the files of the Exchange which are identified with this date are those of Winnipeg Supply (Exhibits 4750-51), Fort Rouge (Exhibit 4753) and Windatt (Exhibit 4752). Two copies of Exhibit 4750 found in the files of Winnipeg Supply (Exhibits 4974 and 4996) have handwritten notations indicating that an average cost of handling figure had also been obtained from Simkin. Other dealers may have submitted figures but the evidence before the Commission has no record of them.

The figures submitted by Winnipeg Supply (Exhibit 4750) give the following picture:

	[Average] Cost per Ton	Estimated Breakdown Between	
		Domestic	Steam
Yard Expense	.78	.85	.57
Delivery	1.39	1.87	.83
Overhead	.75	1.07	.40
	2.92	3.79	1.80

A similar return submitted by this company in November 1949, (Exhibit 4927) gave the following corresponding figures:

	Average Cost per Ton	Estimated Breakdown Between	
		Domestic	Steam
Yard Expense	.59	.77	.38
Delivery	1.47	1.98	.82
Overhead	1.00	1.33	.60
	3.06	4.08	1.80

It thus appears that this company's average handling costs had decreased as compared with the previous year, which decrease the company estimated should be credited entirely to domestic coal, giving a reduction in handling costs for domestic coal of 29¢ per ton.

The figures submitted by Windatt (Exhibit 4752) show average costs of about 1¢ less than for the previous year. The costs for Fort Rouge and Simkin for the previous year are unknown. The average handling costs of these three companies, as shown by the above exhibits in August 1950, were:

Windatt	3.20
Fort Rouge	2.52
Simkin	2.82

Whether, in calculating new formulae the cost figures of the above four companies were the figures used, or whether they were used in conjunction with figures of other companies, is not in evidence, but new formulae were adopted for domestic and steam coals and were incorporated in new Price Guides effective September 1, 1950. These formulae are set out in Exhibit 4993, as follows:

September 1, 1950

Domestic Formula
(all coals)

1% Loss of weight	
Degradation	variable
Unloading	.20
Sacking	.70
Delivery	1.55
Bags	.25
Overhead	1.15
	3.85

Steam Formula
(all coals)

Degradation & Shrinkage	.15
Unloading	.25
Reloading	.20
Delivery	.85
Overhead	.51
	1.96

These formulae show an increase in handling costs for domestic coals of 30¢, as compared with the formula used for the domestic Price Guide of March 1, 1948, and an increase for steam coals of 20¢ as compared with the formula adopted for some steam coals in April 1947.

On the same date, September 1, 1950, an increase of 5¢ was made in the loss of weight and degradation allowances charged in respect of the basic domestic coals (Exhibit 4992), and also in respect of those steam coals for which only 10¢ had been allowed previously.

When the new Price Guides were issued on September 1, Mr. Brett sent with them a circular of which one paragraph reads:

> "The Price List Guide enclosed reflects studies of dealer costs made in recent weeks. These studies have necessitated changes in the pricing formula to cover increased cost of delivery, bagging, etc."

May 1951 Survey

In a circular dated May 22, 1951, another study of handling costs by the Exchange was announced to the dealers by Mr. Brett. The following is an extract from this circular:

> ". . . We are, at present, commencing another study of handling and delivering costs with a view to increasing our gross profit margin. Such studies carried out last year brought to the Winnipeg dealers an increased profit of approximately $300,000.00 and of course, paid for Coal Exchange assessments

many times over the fees assessed. It is possible that our studies for this year will have a similar result."

(Exhibit 693)

Counsel for Jackson argued before the Commission that the statements in this circular did not give a true picture, though Mr. Brett might have thought so. Bearing in mind the total tonnage of coal sold at retail in the Winnipeg area in the calendar years 1950 and 1951, viz., 897,886 tons and 808,796 tons respectively, and the amount of the increases made on September 1, 1950, it would seem that Mr. Brett's estimate of increased profits of $300,000 arising therefrom was probably exaggerated. However the figure does indicate an assumption by Mr. Brett that practically all the dealers adopted the increases embodied in the Price Guides of September 1, 1950. Otherwise the comparison would have no meaning.

A number of the member dealers in the Exchange submitted estimates of their cost of handling coal at this time and Exhibits 4734-44 comprise the estimates submitted by eleven dealers. Apparently returns from at least two other dealers were received by the Exchange since a document was prepared by the Exchange showing a break-down of costs of some dealers, including the costs of two dealers not included in Exhibits 4734-44. Several copies of this document were obtained in the files of the Exchange and certain dealers (Exhibits 3418, 2485 and 4747). The Commission has concluded that this document was used by the Exchange for the purpose of ascertaining the average cost of handling for dealers generally.

One contention advanced by Mr. Brett on behalf of Exchange activities was that cost figures submitted by dealers which appeared to be excessively high were not used by the Exchange in seeking to arrive at the average dealer costs of handling. This contention would appear to be borne out in this instance, since the figures shown in the estimates filed by two of the dealers, namely, Lambert and Carver, were substantially higher than those shown by any of the other dealers who submitted estimates, and since neither Lambert's nor Carver's figures appear in Exhibits 3418, 2485 or 4747.

The cost figures submitted at this time by Winnipeg Supply showed a small reduction in average handling costs but an increase of 22¢ per ton in the cost of handling domestic coal. For this reason and because it anticipated further increases in cost of handling coal, Winnipeg Supply endeavoured to obtain the support of the Exchange and other dealers for an increase of 25¢ per ton in the handling charges in the domestic formula, while proposing that the steam formula be left unchanged. However this proposal on the part of Winnipeg Supply was not accepted.

It seems probable that at a meeting of the Executive

called for July 24, 1951 (Exhibit 1898), the minutes for which meeting are not in evidence, an increase of 5¢ in handling costs for all coals both steam and domestic was approved. At the same meeting it was probably agreed that a recent increase of 20¢ per ton in freight rates should be passed on to the consumer in the price of coal (Exhibits 1898 and 4622). It seems that the 5¢ increase in the item for handling costs was really intended to cover the costs of a joint advertising campaign undertaken through the Exchange on behalf of the coal dealers (Exhibit 1458). For some reason this 5¢ increase in handling costs was attributed to degradation and loss of weight, at least in respect of domestic coal, rather than to overhead costs which would seem to have been the normal place for inclusion of such an item (Exhibit 3419). An examination of Exhibit 3419, together with Exhibit 4993 and the price book discloses that if the loss of weight and degradation charges are disregarded the total handling cost charges in use in August 1951, as shown by Exhibit 3419, were $3.85 for all the coals listed on that exhibit. This was the same charge as was adopted in September 1950. The only change observable in August 1951 is that the item for loss of weight and degradation was increased by 5¢. New price guides were issued dated August 1, 1951, showing the 20¢ freight increase and the 5¢ increase in total cost of handling charges.

With respect to the estimate of Winnipeg Supply that handling costs of domestic coal had increased and were expected to increase still further it may be observed that in a circular dated October 29, 1951, Mr. Brett stated:

> "The Price List Guide issued August 1, 1951 reflected increases in freight which were put into effect July 26. Using the dealers' financial statements of March 31st, 1951 for reference we found that no appreciable difference in the cost of handling coal was indicated over operations of the previous year. This was probably due to the mild weather and good working conditions.
>
> . . ."

(Exhibit 4622)

Winnipeg Supply continued to feel that an increase in domestic handling charges was justified and made further efforts to that end. On October 29, 1951 new Price Guides were issued, effective November 1, 1951, which contained price increases of 25¢ per ton on all domestic coals with the exception of imported stoker coals (Exhibit 501-02). Steam lists remained unchanged except for imported stoker coals.

It seems that the Exchange met with some immediate objection to the increases proposed in the new Price Guide, because on November 1, 1951, Mr. Brett sent the following circular to the trade:

> "Since mailing you the suggested price list guides dated November 1st, we have encountered a few objections to the list and we suggest that you continue with the old price list guide until these difficulties are ironed out.
>
> You will be hearing from us within a few days in this connection."

(Exhibit 4626)

From the oral evidence it would appear that Mr. E. A. Hagborg, Managing Director of Hagborg, was responsible for the cancellation of the November 1 guide. In the course of his examination he stated in part as follows:

> "There was a suggested price increase of 25 cents a ton, and I felt that they did not have enough information at that time. It was before all the companies could produce their statements for the year. They knew that there were increases going through, and I knew that, too. We had increases in wages and increases in different things that have gone through during the year. But I felt that it was an inopportune time to put on a 25 cent increase. They issued a price list guide, but I did not follow it. Consequently nobody else followed it."

(Transcript of Evidence, p. 2378)

The November 1, 1951 Price Guide was not reinstated.

<u>May 1952 Survey</u>

A handwritten document found in the files of the Exchange and which appears to be minutes of the annual meeting of May 29, 1952, contains the following item:

> "Price Comm to deal with Price List Guide before Aug 1st. Exec. Meeting by June 20th -"

(Exhibit 4672)

In a circular dated May 30, 1952, Mr. Brett asked the dealers to submit their cost of handling estimates before June 7, 1952 (Exhibit 2591).

Following the issuance of this circular a number of dealers submitted their estimates. Copies of estimates of six dealers were found in the files of the Exchange (Exhibits 4674-79). These estimates show average overall handling costs. One other dealer submitted a return not showing average overall costs but separate figures for domestic and steam coal operating costs.

From an undated handwritten document found in the files of the Exchange it appears that the average costs of six of these dealers produced a weighted average handling cost of $3.23 per ton. This document also contains the following break-down as between steam and domestic coals:

"Steam 2.16
Domestic 4.30"

The handling costs of one dealer, McCurdy, were apparently not used in producing these figures. Their estimates showed much the lowest cost figures of any of the seven whose estimates are shown on the above-mentioned document (Exhibit 4722). The Sales Manager of McCurdy stated that that company had no accurate knowledge of their costs in their coal department alone (Transcript of Evidence, p. 2057), which may be the reason that firm's figures were not used. It is clear that the item for steam costs, $2.16, was arrived at by deducting one-third from the average weighted cost of $3.23, and that the domestic item of $4.30 was arrived at by adding one-third to the average weighted cost of $3.23.

The preparation of new Price List Guides was discussed at an Executive Meeting on July 17, 1952 (Exhibit 4691), and shortly afterwards new cost of handling formulae were adopted for domestic and steam coals effective August 1, 1952 (Exhibits 5354-56, 5401 and 2622). The new domestic formula shows a charge of $4.40 plus the allowance of 1% for loss of weight and the allowance for degradation, which are variable items. The steam formula shows a charge, including 15¢ for degradation, of $2.36. It may be noted that the domestic formula is 10¢ higher and the steam formula 5¢ higher than would have resulted from adopting the figures worked out in Exhibit 4722.

This was the last cost of handling survey and revision before the start of the inquiry.

Charges for Loss of Weight and Degradation of Coal

All coal loses weight from the evaporation of water in the coal, but the amount of loss varies with different types of coal and the conditions under which it is stored. Some coals have quite high moisture content while in others the moisture content is very small. Some coals are stored by the dealer for a period which may run into months, while others are stored for very short periods of time if at all.

According to Mr. Brett's evidence the Exchange in providing an item for loss of weight had regard only to the loss of

weight which occurred between the time when the coal was shipped from the mine and its receipt by the dealer, evaporation losses while the coal was in the hands of the dealer being treated as part of degradation.

Degradation results from the breaking down of coal into smaller sizes. For any particular type of coal the highest price is obtained from the large size lump coal. When coal is unloaded from the freight car to the ground or to a hard floor and is subsequently picked up and loaded on a truck for delivery to a customer it is always found that there is a certain residue which cannot be disposed of as lump coal. Some of this may be saleable as cobble, stove, nut or pea size at lower prices than prevail at the time for lump coal. Finally there is always found to be some residue which is classified simply as dust. According to the evidence in this inquiry the only customers who buy this dust are the railways. According to oral evidence the price which the dealer obtains from the railways is about equal to the freight which he pays on the shipment from the mine to his own yard.

The Exchange has not made a practice of conducting a regular or annual survey into the items of loss of weight and degradation as they have done with respect to the dealers' handling costs. Mr. Brett did state however, that the items for loss of weight and degradation which were included in the prices shown in the Price List Guides were arrived at by actual survey "You might say continual survey - with dealers". Mr. Vidler of Winnipeg Supply stated that his company continually made checks for loss of weight due to moisture and had cars rescaled before they were unloaded. To check degradation they made periodic tests in their yard to see how much degradation had occurred in a carload of coal.

From the evidence of both of these witnesses it would appear that loss of weight from evaporation of moisture has worked out pretty generally at 1%, at least in respect of domestic coal, and the practice has been to include an allowance equal to 1% of the laid-down cost of domestic coal to the dealer in the prices of domestic coals as shown in the Price List Guide. The actual amount in terms of money has naturally varied according to the cost of each particular coal. With respect to degradation the loss has varied considerably and for most coals it would appear to have been substantially more than 1%.

It was the intention of the Exchange to have the allowances for loss of weight and degradation reflect the actual experience of the dealers in the Winnipeg area. Mr. Brett gave evidence that on at least one occasion, he checked the amount being allowed for loss of weight and the degradation of a certain lump coal. In this instance the total amount being allowed for these two items was about $1.00, and as a result of replies which he received from inquiries made of the dealers the amount allowed for these two items was cut down about 30% or 40%. While this incident indicates the desire of the Exchange that the

amounts allowed for loss of weight and degradation should reflect actual dealer costs, it may be noted that Mr. Brett thought the higher allowance had been in use for some years before his survey discovered that the actual costs were much lower (Transcript of Evidence, pp. 640-41 and 673-74).

It may well be argued that allowances for loss of weight and degradation arrived at as the average experience of a number of dealers who had made reasonably careful checks of their costs in this connection (which seems to have been done at least in the case of Winnipeg Supply) should result in reasonably close approximation to true costs for these two items. However, during the three or four years preceding this inquiry, some changes were made in the allowances for loss of weight and degradation, which in the absence of any direct evidence concerning the reasons for adopting them, appear to the Commission to have been arbitrary in nature.

We have already seen that on September 1, 1950, an increase of 5¢ was made in the allowances for loss of weight and degradation charged in respect of the basic domestic coals (Exhibit 4992) and also in respect of certain steam coals for which only 10¢ had previously been allowed. We have also seen that on the 1st of August, 1951, a 5¢ increase in handling cost charges was attributed to the loss of weight and degradation item, at least in respect of domestic coals. Apparently the reason for this 5¢ increase is given in a circular dated November 14, 1951, sent out by Mr. Brett, one paragraph of which reads as follows:

> "In our Price List Guide of August 1st, an increase of 5 cents per ton was made in addition to the freight increase so that our members would be covered for the 1 cent per ton assessment required to defray expenses of the advertising campaign.
>
> . . ."
>
> (Exhibit 1458)

From this statement it would appear that in this instance at any rate, the Exchange and the dealers did not accept the advertisers' hypothesis that "advertising pays for itself". It seems clear that the increase was in no way related to actual increases in these items of dealer expense. The increase of 5¢ was included in subsequent Price List Guides.

It will be remembered that following the cost of handling survey of May 1951, it was decided not to make any general increase in the cost of handling formula. It will also be recalled that on October 29, 1951, new Price Guides were issued to be effective November 1, 1951, containing price increases of 25¢ per ton on all domestic coals with the exception of imported stoker coals, and further that these new Price Guides were withdrawn due to opposition of certain dealers, particularly Mr. E. A. Hagborg. However, at a

meeting held on December 5, 1951, the Exchange Executive decided to increase prices by 25¢ per ton on certain coals described as "coals that are increasing" (Exhibit 4652). The change was to be effective December 15. An examination of the Price Book break-downs for a number of coals for the date December 15, 1951, and a comparison of the figures shown therein, with the current cost of handling formula for domestic coals, indicates that this increase was attributed to loss of weight and degradation. This may have been necessary since no change was made at that time in the cost of handling formula. The Price Book break-downs for December 15, 1951, actually show only one figure for the total of dealer handling costs plus the allowances for loss of weight and degradation. However, a subsequent Price Book break-down dated August 1, 1952, contains two items, one for loss of weight and degradation and the other for handling costs. The figure given at that date for loss of weight and degradation is the same as would be obtained by deducting from the combined figure shown in the break-down of December 15, 1951, the amount shown in the current cost of handling formula at that date. This statement is true generally of coals for which a 25¢ increase was put into effect on December 15, 1951, though with respect to some of such coals some modification is found in the break-down of August 1, 1952. Drumheller coals of all sizes, lump, stove, nut and stoker were among those for which the 25¢ increase was put into effect on December 15, 1951.

When the August, 1952, cost of handling formulae were adopted, the loss of weight and degradation allowances for domestic coals were revised and in many cases increased. In a very few instances a small reduction was made, these all being cases in which an increase of 25¢ had been put into effect on the previous December 15. In a number of instances no change occurred, but in a good many instances the allowances for all four sizes, lump, stove, nut and stoker, were brought into line with those fixed for the corresponding Drumheller coal on December 15, 1951. It may be noted that the allowances fixed for these various sizes of Drumheller coal on December 15, 1951, were not the same as those fixed for any other coal at that time.

Apart from the internal evidence afforded by the current cost of handling formulae, and by the break-downs in the Price Book, the only evidence before the Commission concerning the reasons for changes in the allowances for loss of weight and degradation in December 1951 and August 1952, is found in a review prepared by Mr. Vidler of Winnipeg Supply in September 1951, which sets out a break-down of handling costs, including estimates for loss of weight and degradation with respect to a number of coals, including Drumheller, Saunders Creek and Foothills (Exhibit 5180). The Director prepared a table, which is found in the Statement of Evidence on p. 86, reading as follows:

"Type	1.	2.	3.
Drumheller lump	.572	.45	.70
Saunders Creek lump	.581	.66	.91
Foothills lump	.556	.70	1.00"

Column 1 of this table shows the actual loss of weight and degradation costs of Winnipeg Supply for the three coals shown as of September 1951; Column 2 shows the allowances provided by the Exchange at that time; and Column 3 shows the increased allowances put into effect on December 15, 1951, as shown in the Price Guide of that date, which allowances were subsequently adopted as loss of weight and degradation costs in the August 1, 1952 formula. It seems clear at any rate that the changes made on December 15, 1951, bore no relation to the corresponding costs of Winnipeg Supply. There is nothing in the written or oral evidence to indicate that the actual experience of dealers at this time showed increases in the loss of weight and degradation charges applicable to these particular coals or to any coals. Therefore, in the opinion of the Commission, these increases of December 15, 1951, appear to have been arbitrary and the changes made on the 1st of August, 1952, which brought the allowances for a considerable number of other coals into line with those fixed for Drumheller on December 15, 1951, therefore, also appear to have been arbitrary in character.

Allowance for Bags

Since a very large proportion of the domestic coal sold in Winnipeg is sacked or bagged by the dealer for delivery, and since bags not only wear out but may be damaged or lost, the provision of bags is a continuing expense for the dealer and forms part of his handling costs In the April 1947, domestic formula the charge for bags varied from a low point of 15¢ per ton to 30¢. However, in the formula adopted in 1948 there was included a uniform charge of 25¢ for bags and this amount continued to be used down to and including the formula for August 1952.

It would seem that the actual cost of bags was well below this figure of 25¢. This appears from the cost figures of several dealers and also from a circular sent by Mr. Brett to the dealers and dated October 1, 1948, the first two paragraphs of which read as follows:

> "The cost of bags and the expense of bagging coal have been the subject of much debate for many years. Unquestionably these costs have advanced each season until we now find the bagging operation is an extremely important and perplexing factor in the handling of coal.

In the markup formula which we have been using during the past season the cost per ton of bags has been set at 25¢. A study of dealer costs would indicate that the actual outlay is somewhat between 10 and 15¢ per ton."

As no change in the allowance for bags was made following this circular it appears to the Commission that the charge of 25¢ bears no direct relation to actual dealer experience and is arbitrary in character.

2. Subsidiary Pricing Arrangements

In addition to the preparation and distribution of a Price Guide certain other pricing matters were considered in the Exchange and subsidiary pricing arrangements were arrived at, chiefly for the purpose of dealing with situations not provided for in the Price Guide, or where it was felt that departure from the prices shown in the Price Guides was justified. The matters so dealt with fall under the following heads:

(i) special discount for "year-round accounts",

(ii) prices of coals not listed in the Price Guides and other price information,

(iii) charges for deliveries in 50 lb. bags and for carrying coal into basements,

(iv) subsidiary pricing arrangements in connection with delivery of steam coal,

(v) zone charges,

(vi) discount for "pickup" buyers.

In the opinion of the Commission the evidence on these matters indicates the intention and the desire of the Exchange and its members that the prices charged by the various dealers should be as nearly as possible uniform.

We shall examine each of these headings briefly in turn:

(i) special discount for "year-round accounts"

Near the end of Chapter IV of this report a reference was made to two special classes of steam coal accounts. One of these as set out in Exhibit 311 comprised laundries, dry cleaners, bakeries, dairies and creameries. The heading of Exhibit 311 is as follows:

"THE FOLLOWING INDUSTRIES USING LARGE QUANTITIES OF COAL THE YEAR ROUND

Subject to 20¢ off the regular steam list for stoker coal and 25¢ off regular steam list for other sizes."

Another document found in the files of Jackson, dated April 28, 1941 (Exhibit 1907) contains a similar list of "Year-Round Accounts". According to this document a discount of 25¢ per ton off the steam coal list was applicable to all sizes of coal sold to these accounts. Mr. W. F. Kerby, Vice-President and Sales Manager of Capital, stated in his evidence that there was an understanding at that time that year-round users would be allowed a discount of 25¢ off the steam list (Transcript of Evidence, pp. 1444-45).

According to the evidence of Mr. Vidler of Winnipeg Supply, and Mr. Hawkins of McCurdy, this practice of giving a discount of 25¢ off the steam list to certain year-round users was continued in effect down to the time of the inquiry by many of the dealers, though perhaps not adhered to by all (Transcript of Evidence, pp. 1117 and 2060-61).

Mr. Brett testified with respect to this class of business that it had been proposed that when a dealer intended to quote an off-list price he should advise Mr. Brett of the price he was quoting, the intention being that Mr. Brett would pass this information on to any other dealer who might be asked to quote on the same account (Transcript of Evidence, pp. 674-75 and p. 1003).

Apparently this arrangement did not work satisfactorily as is indicated in a circular dated November 20, 1951, sent out by Mr. Brett and marked "Confidential", copies of which were found in the files of Hagborg (Exhibit 1638) and McCurdy (Exhibit 2896). This circular contained the two following paragraphs:

> "In our last meeting of the Executive, I was instructed to obtain from the dealers a list of those accounts presently being billed below the steam list guide. The purpose of this is to supply me with very necessary information, so that I can give some thought to improvement.
>
> This information will, of course, be held strictly confidential and will be discussed only with the dealers concerned."

(Exhibit 1638)

In a letter bearing the date November 13, 1951, Mr. Vidler of Winnipeg Supply, wrote to Mr. Brett enclosing a list of accounts and giving the information asked for in the foregoing circular. Mr. Vidler's letter reads as follows:

"Enclosed is our firm's list of Steam and Commercial business where there is some deviation from the regular List price.

I have segregated these into three groups which are shown accordingly with other additional notations or explanation.

I think the reason for special prices in their case is pretty well self-explanatory with the possible exception of the three Catholic institutions marked*.

If you can believe it, it was only when I had our Steam clerk make us this list that I was aware of this special price to these three places; however, in tracing the origin of these special prices, I find they came into being during the war years when Pat O'Brien was with us and seemingly were dropped to this price to meet competition prices from some other dealer.

However, you can certainly accept my assurance that on the very first opportunity, such as increase in freight rate, I will bring this price up to List -- providing, of course, I am not 'cutting off my nose to spite my face' or in that there are other dealers who are aware of this discount price being in effect and will not follow suit in bringing the price up. So perhaps I can get your assistance on doing this when you have completed your survey and received your off-price lists from the other dealers."

(Exhibit 5201)

The Commission considers that the language in this letter shows clearly that Winnipeg Supply regarded certain types of account as being entitled to a discount from the ordinary price for steam coal, but that accounts like the three Catholic institutions referred to in the letter, were not recognized by the Exchange or other dealers as being entitled to any such discount.

Attached to Mr. Vidler's letter is a document (Exhibit 5202) containing three lists of accounts. The first list is headed "Year-Round Business (25¢ off list)". It contains eight accounts and the prices being charged at that time to them. The second list is headed "Airport Accounts (25¢ off list to keep from carlot buying)". It contains prices for five accounts. The third list is headed "Other Special Accounts". It contains eleven accounts with the prices being charged to them. When the prices in this list are compared with those in the current steam list (Exhibit 196), it is found that most of them show a discount of 25¢. It is in this third list that the names of the three Catholic institutions, referred to in Mr. Vidler's letter, appear.

McCurdy also wrote in reply to Mr. Brett's circular and according to the oral evidence of several witnesses some of the other

dealers did likewise. McCurdy's letter dated November 21, 1951, and marked "Confidential" reads as follows:

> "Complying with your request under date of November 20th., please be advised the only account we are selling below the Steam List Guide, other than those mutually agreed upon, is the one to the Union Loan and Investment Company. The reason for this is well known to you.
>
> We are selling the City of Winnipeg, Souris Cobble Coal, delivered to their Relief Department, below the retail list as shown in our Guide.
>
> The Writer will be pleased to discuss this matter further with you should you so desire."

(Exhibit 2897)

When questioned on the phrase "other than those mutually agreed upon" in the foregoing letter, Mr. Hawkins of McCurdy Supply, stated:

> "I am not familiar with that part of it so much. But there were some buildings being sold below our suggested list. We had agreed to let them stand. This came up often."

(Transcript of Evidence, p.2060)

Mr. Brett was questioned concerning the purpose of this survey of accounts sold at less than the Steam List. His explanation was that if he had the information requested by the circular, he would be able to make the off-list prices available to other dealers who might wish to quote to the same account (Transcript of Evidence, pp. 674-81). This explanation would appear not to agree with the impression which would be given to a recipient of the circular when we remember that the circular was marked confidential and contained the statement that the information would be held <u>strictly</u> <u>confidential</u> and would be discussed only with the dealers concerned.

Mr. Hawkins offered another explanation. He stated that Mr. Brett had told him:

> "if a number of sales are below list, perhaps our list is too high. If they figure we can do business cheaper, we will reduce the list."

(Transcript of Evidence, p.2060)

Mr. Hawkins added that no reduction was made, giving as the reason that the survey did not show "enough selling below the list".

The evidence available to the Commission is not conclusive, but in the Commission's opinion, it probably points to a policy of endeavouring to keep the accounts which were deemed to be entitled to special discounts within certain understood categories, which would be generally acceptable to the dealers.

(ii) prices of coals not listed in the Price Guides and other price information

The Exchange is used as a funnel for the passing of price information to the dealers, particularly where the information desired is not found in the Price Guide. The importance which Mr. Brett attached to this practice being adhered to appears from a letter which he wrote to Jackson dated September 22, 1952. The letter reads in part as follows:

> "At various times throughout the year I am asked to supply suggested steam prices on coals which are not generally listed in the steam list. The dealers phone me and I work the prices out for them based on the formula now being used. If this procedure is not followed, misunderstandings are encountered together with a certain amount of ill feeling.
>
> . . .
>
> The importance of giving me a call before quotations are made is apparent. I certainly want to avoid a price war, which is bound to occur unless we all follow the same procedure."

(Exhibit 4703)

Where this procedure was followed the inquiring dealer would be placed in the same position as if that coal had been listed in the current Price Guide, and probably it was intended or at least hoped, that following this procedure would result in as much similarity of price as if that coal had been listed in the current Price Guide.

A further evidence of the role of the Exchange as a clearing house for price information is found in a circular issued by the Exchange dated April 15, 1947, at the time of the removal of wartime price control. One sentence of this circular reads:

> "Should you be in doubt as to mine prices or price structure, at any time, kindly 'phone this office."

(Exhibit 789)

(iii) charges for deliveries in 50 lb. bags and for carrying coal into basements

The Price List Guides have never shown any extra charge for delivery of domestic coal in 100 lb. bags, and delivery in smaller bags obviously involves higher labour costs for bagging and probably higher costs for the bags themselves.

The first evidence we have seen of the Exchange taking a direct interest in this matter is found in a Price List dated November 1, 1939, shortly after the outbreak of the war. This list contained the notice:

> "No charge for ordinary sacking. 50¢ per ton charge for stoker coal in 50 pound paper or jute bags."
>
> (Exhibit 1714)

A Price List dated August 22, of the next year contained a similar notice except that the price was increased from 50¢ to 75¢ per ton (Exhibit 1718). This level was maintained in the Price Lists until May of 1947, at which date the Executive decided to increase the charge for deliveries in 50 lb. bags to $2.00 per ton. At the same time an extra charge of $1.00 per ton was decided upon for 100 lb. bag delivery if it was required that the coal be carried into the purchaser's basement (Exhibit 4345).

These charges remained unchanged in the Price Lists down to the time of the inquiry.

(iv) subsidiary pricing arrangements in connection with delivery of steam coal

The Exchange also took some interest in special circumstances which might affect the price of steam coal. One example is the comparatively rare occurrence of delivery of steam coal in sacks, steam coal being normally delivered in bulk. In the Steam Price Guide dated August 22, 1940, we find the following notice "50 cents per ton charge for sacking steam Coal" (Exhibit 1717). This charge has been shown in the Price Guides issued since that date and since 1942 a similar charge of 50¢ per ton has been included for wheeling Steam Coal.

The Exchange and the dealers have always recognized that where coal is delivered by railway carload directly to the customer's building, the dealer has practically no handling costs. This is shown by the fact that from as early as August 1934, the Steam Price Guides

have contained the following notice:

> "Where R.R. track runs direct to building and no hauling is necessary, add 25 cents per ton to your F.O.B. cost."
>
> (Exhibit 296)

The same notice appears in the Steam Price Guide issued in 1953 immediately prior to the beginning of this inquiry (Exhibit 528).

It would appear that much of the carload business is handled by wholesale coal dealers rather than by retailers. The minute book shows that discussions were held between representatives of the Exchange and wholesalers in 1934 and again in 1947, with a view to securing some arrangement under which retailers might obtain some of the carload business. There is no evidence concerning the success or otherwise of these efforts.

(v) zone charges

In 1947 a committee of the Exchange was appointed to deal with the question of charges for out of town deliveries and to draft a plan of charges for presentation to the members. As the Manager had stated that a good deal of confusion existed and variable rates were being charged, it would appear that the purpose of the committee was to see if uniform zone charges could be agreed upon. However, the committee reported against fixing any extra charge for deliveries outside the Greater Winnipeg area. The reason given for this recommendation was:

> "the already high cost of coal and the fact that it would be impossible to set up a plan which would be acceptable to all dealers because of the widespread locations of yards."
>
> (Exhibit 4350)

There is no indication that the Exchange either then or later ever came to a decision to set up zone charges.

(vi) discount for "pickup" buyers

Customers who pick up coal at the dealer's yard relieve the dealer of much in the way of delivery costs. It is, therefore, not surprising to learn that some discounts are given to such purchasers. Through the medium of the Exchange some attempts have been made to arrive at a uniform discount.

At the beginning of 1952 it would appear that the situation was not considered to be entirely satisfactory. Under date of January 14 of that year, Mr. Vidler of Winnipeg Supply wrote to Mr. Brett, his letter containing in part the following:

> "Another point which might be put on the agenda for our meeting, there seems to be quite a variation in pick-up prices allowed to farmers and other types of customers calling at dealers' yards. I was always under the impression that this was $1.00 off per ton but there seems to be quite a variation to this now. Perhaps we should have a discussion on this, and we may even feel that while $1.00 was satisfactory a few years ago, this allowance should be increased."

(Exhibit 5237)

The agenda for an Executive meeting called for March 5, 1952, contains the following item:

"3. Yard pick ups
Dealer pick ups
What allowance should be made"

(Exhibit 4667)

Mr. Brett's notes taken at the same meeting contain this entry:

"1.00 off yard pickups"

(Exhibit 4666)

When questioned concerning these exhibits Mr. Brett stated that he did not remember receiving Exhibit 5237, but that pick-up charges were discussed at the meetings at different times. He did not think there had ever been a uniform arrangement concerning these charges. He further stated that the entry shown in Exhibit 4666 meant that the matter was discussed at the meeting and that if any agreement had been arrived at he would have made a note of it. The exhibit did not mean, in his opinion, that an agreement had been reached (Transcript of Evidence, pp. 1006-08).

While it may be that no agreement was reached at the meeting just referred to, it seems that the practice of allowing a $1.00 per ton discount to pickup customers was pretty widely followed at this time. This appears from copies of quotations dated in October 1952, found in the files of ten dealers, who made quotations on a contract to supply 500 tons of coal to the City of Winnipeg Engineering Department. Nine of the ten dealers quoted a delivered price and also a price $1.00 less if the coal was picked up by City of Winnipeg carrier. The tenth dealer showed only a 75¢ differential in his quotation.

3. Observance of Price Guides

From the evidence of a number of dealer witnesses it has been definitely established that the prices in the Domestic Price List Guide have been very generally followed by a great majority of the dealers in the Greater Winnipeg area. Domestic coal sold at off-list prices has formed a very small percentage of the total sales of domestic coal.

Occasionally, due to special circumstances, discounts have been allowed from the Domestic List Price as for example, where a whole truckload has been taken at one time, where delivery has been particularly easy, or where the customer has paid cash. In addition the evidence indicates the existence of "coal clubs". A coal club is formed by the members of an organization, or a group of householders, who make an arrangement to buy all their coal from one dealer, obtaining in return a discount from the regular domestic price.

Another example of infrequent deviation from the Domestic Price Guide is found in concessions in price given to small establishments, such as boarding houses and small apartment blocks, which use more coal than ordinary domestic customers, but which do not fall within the definition of steam accounts.

With regard to steam coal, the evidence of many dealers examined during the inquiry establishes that, while the prices in the Steam Coal Price Guide were generally observed, divergence from Steam Guide Price Lists has been a matter of much more frequent occurrence than in the case of the Domestic Guide prices. One important case of variation from the Steam Price Guide is that of contracts let by tender which will be dealt with separately in the next chapter of this report. Many other instances in which discounts from the prices shown in the Steam Price Guide have been granted appear to have been given in accordance with arrangements, if not agreements, existing among the dealers, such as the discounts allowed to certain classifications of regular year-round users. However, when allowance is made for all cases of this sort there still remain a good many instances in which discounts were given for a special reason; for example, to dissuade the customer from buying in carload lots (presumably from the mine owner or a wholesale coal dealer); to hold a good customer who may have been offered a discount by another dealer; or perhaps where particular ease or convenience of delivery reduced the dealer's handling cost.

That the prices in the Domestic and the Steam Guides were generally observed by the dealers is also indicated in letters written by the Manager of the Exchange of which the following are two examples.

In a letter dated May 25, 1948, the Manager wrote to the

Manager of the Greater Vancouver Retail Fuel Dealers Association in part as follows:

> "Generally, the dealers charge the prices which we suggest, as they know they are based on accurate studies and comparisons, but we make no attempt to enforce prices. Usually the dealers who sell at low prices do not last long, or get into financial difficulties."
>
> (Exhibit 4377)

In another letter dated July 24, 1951, to the Dominion Coal Board, Mr. Brett stated in part:

> "In the main, though, I believe that most of the dealers follow these guides as they are well aware that the formula worked out is based on dealer statements supplemented by studies made by a good firm of Chartered Accountants."
>
> (Exhibit 4603)

With respect to enforcement of the prices listed in the Price Guide, it has already been pointed out at the beginning of this chapter, that on a number of occasions since 1947, the Exchange took pains to point out to the dealers that the prices shown in the Price Guide were not compulsory. These circulars emphasized that the dealers were free to follow the Price Guides or not, as they wished (Exhibits 789, 4359-60 and 464 in addition to Exhibits 4787-88 already referred to).

With only one or two exceptions all the dealers examined in the inquiry stated that they did not consider themselves bound in any way to follow the prices shown in the Guides. One exception for which there is no supporting evidence was that of a small dealer who stated that he felt the Exchange was in some way linked with the Government and that he had to follow the prices set out in the Guides. Another small dealer testified that during the 1951-52 season he advertised Souris coal at a price 50¢ below the price listed in the current Guide and that he was told on the telephone by someone he identified as Mr. Brett to withdraw his advertisement "or else". He regarded this as a threat to have supply cut off, so he withdrew his advertisement (Transcript of Evidence, pp. 2247-48). The Commission feels that no weight can be given to this evidence. It should also be noted that Mr. Brett denied that he had ever spoken to this particular dealer (Transcript of Evidence, p. 2504). There is no other evidence of any attempts since the war to compel compliance with the prices listed in the Price Guide.

CHAPTER VI

CONTRACTS FOR COAL LET BY TENDER

In the opinion of the Commission the matter of coal contracts let by tender is of sufficient importance in this inquiry to warrant treatment in a separate chapter. In the first place contracts let by tender have been dealt with in an entirely different fashion from other retail sales, and in the second place it has been strongly urged upon the Commission that whatever was done with respect to contracts let by tender was in no sense an Exchange activity, but was done by a group of dealers together with Mr. Brett, acting in his personal capacity and not as Manager of the Exchange.

For many years it has been the regular practice of certain large coal consumers in the Winnipeg area to purchase their coal requirements after calling for tenders for the supply of a particular building. This applies, for example, to federal and provincial government buildings, school buildings and hospitals.

In most cases where tenders are called for large quantities of coal are involved. The method of its delivery makes possible a considerable saving in handling expenses. For this reason some dealers have been ready to quote on these contracts lower prices than those contained in the Price Guide (Transcript of Evidence, pp. 1714 and 1717-18).

From both documentary and oral evidence it appears that since 1946 coal sold on tenders has amounted to less than 10% of the total amount of coal sold annually in the Winnipeg area (Exhibit 4301, Transcript of Evidence, p. 836). In 1952, the last year prior to this inquiry, about 723,000 tons of coal were sold at retail in Winnipeg, of which the tonnage let by contract was estimated at somewhat less than 72,000 tons.

Not all the dealers in Winnipeg have been able or willing to handle this large-scale contract business. It has been attractive chiefly to the larger dealers who possess cost-saving equipment for loading and unloading and who have substantial storage facilities. There are, however, some fairly small contracts which are let by tender and in these contracts some of the smaller dealers have been interested.

In recent years out of the 68 dealers with which we are concerned in this inquiry, a small group, varying from 10 in 1946 to

22 in 1952, have been consistently able to obtain almost all of the tender business. In 1952 the 22 dealers included in this group were the following:

Adams
Beverley
Capital
Crown
Fort Rouge
Hagborg
Harstone
Irvine
Jackson
Jubilee
McCurdy
Miller
Moore
Northland
Red River
Simkin
Swail
Turk
Union
Windatt
Winnipeg Supply
Wolfman

One perhaps significant reason for the growth in the number of dealers interested in the contract business is found in a memorandum prepared in 1951 by Mr. Brett, in which he stated:

> ". . .
>
> What we should decide here today is whether we want to retain a reasonable margin of profit for the Dealers handling these contracts or whether it would be better to leave the bidding entirely on an open basis.
>
> To arrive at a decision or a basis for discussion, it would seem advisable to review briefly the history of this type of business. Tenders of this nature have been submitted to the Dealers for a great many years. In the beginning only a few of the Dealers were interested in this class of business, possibly because some were better equipped to handle it than others. From the beginning, attempts have been made by the Dealers interested to establish by mutual agreement, a profit margin which would net the Dealer a fair return and at the same time would give the large buyer of coal a special price. It was always very difficult to maintain for any great length of time an arrangement of this nature. A few of the Dealers would work

very hard to establish satisfactory profit margins and when that point was reached, it was natural that the business would be attractive to others. Thus the controlling group would quite suddenly find all their work had gone for nothing because of a low bid submitted by a Dealer or Dealers."

(Exhibit 4729)

It has been clearly established by evidence that at least since 1946 the members of this group, varying, as we have seen, from 10 in 1946 to 22 in 1952, have operated an allocation scheme which was intended to secure between them practically all of the coal contracts let by tender in the Greater Winnipeg area. One qualification of this statement should be made. Red River was still a member of the group in 1951, but during the 1951-52 heating season this firm withdrew from the Exchange altogether and did not belong to this group in 1952 (Exhibits 2546, 2573 and 2690, Transcript of Evidence, pp. 20-24 and p. 42).

In this report this group of dealers will sometime be referred to as the "tender group".

While it appears that some arrangements did exist regarding tender contracts prior to 1946, Mr. Brett testified that at the time when he left the Exchange in 1946 the allocation scheme mentioned above was not in effect, but that when he returned in 1948 this allocation scheme was already operating (Transcript of Evidence, pp. 692-93).

The evidence shows that the allocation scheme operated in the following manner. In the spring, before customers began calling for their yearly tenders, a meeting of the "tender group" took place for the purpose of allocating to each member of the group a certain number of tons from the anticipated tonnage of contract business for the ensuing heating season. The basis of allocation was to take the total retail coal sales of members of this group for the previous year and to allot to each member of the group the same percentage of the anticipated tender business as he had enjoyed of the total coal sales of the members of this group during the previous year. Mr. Brett would then prepare a statement of the proposed allocations and send a copy of it to each member of the group. Subsequently, probably when tenders had been called for one or more contracts, Mr. Brett would call another meeting of the group for the purpose of deciding which dealer or dealers would handle particular contracts within his or their previously allocated quota. This meeting might well be attended only by those dealers who were interested in the particular contracts under discussion.

Following this meeting the dealer to whom a particular contract was allocated would compute the price at which he intended to

quote and would telephone Mr. Brett informing him of the price he proposed to put in his tender. Mr. Brett would then communicate this price to other dealers who were interested in this particular contract. These dealers were then expected either not to quote at all, or to quote prices higher than that of the dealer who was to be favoured with this contract.

If this arrangement had been universally honoured by the dealers in the group, and if no dealers outside the group had ever entered tenders, the result would have been that the dealer to whom the contract had been allocated would almost always have obtained the contract. However, on some occasions it appears that one or more dealers did not respect this gentlemen's agreement, but put in lower bids, resulting in some dislocation of the allocation scheme.

Mr. Brett kept a record of the tenders actually awarded for the purpose of seeing how closely they corresponded to the allocations made by the group. This information was made available to individual dealers who might ask questions concerning the contracts. He would also circulate to members of the "tender group" (usually in August or September) a resumé of the position, showing the tenders awarded and the balance of the allocations that had been made. One such resumé dated July 7, 1950, headed "Winnipeg Coal Exchange" and signed A. H. Brett, Manager, was found in the files of Winnipeg Supply (Exhibits 4961-62). The following is an extract from this report:

> "I attach a list showing the percentage of allotments due each dealer on the contract business, the actual allotment in tons, the amount received to date, and the balance due each dealer. So as to avoid controversy, I have placed these figures on a conservative basis. I am satisfied that at the year end, the result will show higher allotments than this sheet portrays."
>
> (Exhibit 4961)

Mr. Brett testified that the Coal Exchange had nothing to do with the contract business or the activities of the tender group (Transcript of Evidence, p. 684). He further testified that in his capacity as Manager of the Coal Exchange he had no function with respect to steam contract business and that what he did in connection with the tender group was done in his private capacity (Transcript of Evidence, pp. 1055-56). He stated further that he did not keep any "system of records" of the meetings of the tender group, although he did make notes of the matters discussed (Transcript of Evidence, p. 694). His evidence in this connection is supported by a memorandum written by Mr. Brett in 1951 (part of which was quoted above from Exhibit 4729). In this memorandum, which was not for public consumption, but presumably for the members of the tender group only, Mr. Brett stated in part:

"There is a mistaken idea held by some of the Dealers that this particular activity is handled by the Coal Exchange. This is not the case as it would not be proper for the Exchange as an Association to exercise any control on prices. The only connection with the Exchange is that I have for some time, acted as a sort of referee and have helped in the organizing and the preparing of information. It is a job which I do not like and as I have said repeatedly, I do not think that I should be engaged in it, that one of the Dealers should handle this particular responsibility. However, I have continued with the work because as you all know, my objective has always been to see that the Dealers made money and that their profits should be increased and maintained rather than lowered."

(Exhibits 4731-32)

As against this evidence it should be noted that there is nothing on the record to indicate that Mr. Brett received any remuneration from the members of the tender group, all of whom were members of the Coal Exchange, for the work which he did in connection with the allocation scheme. From Mr. Brett's notes of matters discussed at one meeting of the tender group, he indicated that one Coal Exchange activity (advertising) was discussed at this meeting (Exhibit 4701). It is further noted that the report circulated by Mr. Brett to members of the tender group under date of July 7, 1950 is headed "Winnipeg Coal Exchange" and signed "A. H. Brett, Manager". Mr. Brett explained the use of Exchange stationery for correspondence with the tender group by stating that he never gave it any thought, but just used what letterhead or material was handy (Transcript of Evidence, p. 1056).

Consideration of the foregoing evidence has led the Commission to the conclusion that there was some overlapping of function on the part of Mr. Brett, but that the evidence does not prove that the allocation scheme was carried on as a function of the Exchange.

Success of the Allocation Scheme

The success or failure of such a scheme as that we have described above depends upon a number of factors, for example, whether any means of enforcing compliance with the arrangement existed or were used, the extent to which the members of the group adhered to the arrangement and the extent to which other dealers outside the group sought to obtain a share of the contract business.

With respect to enforcement, there is no evidence of any attempt being made to enforce compliance by any dealer with the

arrangement. On the contrary all the evidence before the Commission indicates that there were no means of enforcing compliance with the allocation scheme and that no attempts were ever made in this direction. On this score it seems to have depended on what may be called a gentleman's agreement.

Nor was the group an exclusive one. Between 1946 and 1952 one or more members appear to have been added to the group each year. Mr. Brett stated that some of the members did not attend the meetings of the group and that any dealer, if he so desired, could become a member of the tender group even if he did not attend the meetings. He added that any dealer might indicate his desire to bid on a certain contract without asking to become a member of the group, and in that event the tender group would recognize his right to bid and would allocate to him a certain tonnage from that contract which might or might not be satisfactory to him (Transcript of Evidence, pp. 830-31).

Interference with the working of the allocation scheme arising from bids made by dealers outside the group appears to have been a factor which required consideration each year. From the record it seems apparent that the group policy was to bring into its membership outside dealers who had shown their interest in this class of business by bidding for and obtaining contracts on tender. This was done of course for the purpose of securing their co-operation with the group. The enlargement of the group seems to have arisen largely from this cause. For example we find that three dealers, namely Swail, Adams and Miller, who had not been mentioned in the original allocation for the year 1946-47, did in fact obtain 15,301 tons out of the total of 51,396 tons, which the documents show were awarded during that season. In the following year 1947-48, two of these dealers, namely Swail and Miller, were included in the allocations made by the group. During that year Adams and Red River were not members of the tender group, but obtained a sub-contract. In the next year 1948-49, Adams and Red River were included in the group and were given certain allocations of contract business. Subsequently in that year, and in later years, other dealers were added to the group and given allocations. There is no evidence to show whether these firms had bid for or obtained contracts prior to being included within the group, but they had undoubtedly become interested in this type of business.

In so far as compliance with the scheme by dealers who were currently members of the group is concerned, the arrangement did not always have smooth sailing. One cause of difficulty was that the total tonnage for which contracts were actually called during the year, or the amount called for by one customer, might prove to be less than had been estimated by the group at the beginning of the season. The group endeavoured to overcome this difficulty by holding out of the original allocation a certain amount of the expected tonnage. A

second difficulty was that an outside dealer might bid for and obtain a contract which had been allocated to a member of the group, thereby upsetting the arrangement to some extent. A third difficulty, which sometimes caused considerable concern, was that a dealer who was a member of the group might disregard the gentleman's agreement and underbid in order to increase his tonnage beyond what had been allocated to him. This, of course, could only be done at the expense of some other member or members of the group.

A number of instances of independent bidding of this type are recorded in the evidence. In part such action may have arisen from the fact that some dealers were dissatisfied with the allocation made to them. It would seem from Mr. Brett's evidence that very few of the members of the group were in fact dissatisfied with their allocation. When questioned concerning one sentence in a memorandum of his (Exhibit 2340): "Red River Co-op and Alex Turk to be taken care of to avoid trouble." He answered "Well, they are the only two, among a great many dealers, who were continuously dissatisfied with the allocation" (Transcript of Evidence, p. 826). A minute later Mr. Brett stated that he would not include Red River Co-op as one who kept putting in tenders and upsetting the balance which had been made by the group for the allocation of business. With respect to Turk he stated, "I think Turk has been independent of the idea at times, you know" (Transcript of Evidence, p. 827). His evidence then proceeded:

"Q. And he has not co-operated with the group in this allocation?

A. Not to any great extent, no.

Q. So that that is the reason why you suggest that he be given some business -- so that he would co-operate?

A. I would hope so.

Q. You would hope that he would co-operate?

A. Yes.

Q. And did he?

A. At times, yes."

(Transcript of Evidence, p.827)

It may be noted that Mr. Brett further stated that Turk had never attended a meeting of the group that he could remember. There is no evidence from any other source that Mr. Turk ever attended such a meeting.

While the foregoing evidence of Mr. Brett would suggest that Turk was the least co-operative member of the group, it would seem that the dealer who occasioned the greatest amount of difficulty was Swail. The experience with Swail seems to have been as follows:

In the year 1946-47 when Swail was not a member of the group, it would appear from Exhibit 2200 that he obtained contract business on tender in the amount of 12,150 tons in all. By the year 1947-48 Swail had become a member of the group. From Exhibits 2956-57 it would appear that he was allocated a total of 4,000 tons and from Exhibits 2209 and 2210 it would appear that he actually received 4,000 tons during that season. For the year 1948-49 Exhibits 2188-89, bearing the handwritten date "Mar.16/48", and found in the files of Jackson, give what appears to be a preliminary allocation for the members of the group for the ensuing year, showing the actual contracts or portions of contracts which it was apparently suggested each member should obtain. These documents show Swail being allocated a total of 4,000 tons. Subsequently some other firms were taken into the group and it would seem that the allocation among the members was revised. A document bearing the handwritten date July 27/48 (Exhibit 2185), also found in the files of Jackson, contains a list of the members of the group, the percentage which each enjoyed of the total coal sales of the members, the number of tons of contract coal to which each dealer was entitled by reason of his percentage, the amount allocated to each member to date and the balance still to be obtained by each dealer, or in some cases the surplus already allocated. In the case of Swail this document shows him as being entitled to 946 tons but as having already been allocated 3,400 tons and as having secured up to that date a surplus of 2,454 tons. There is no evidence as to the final results for the season 1948-49. For the year 1949-50 a document also found in the files of Jackson (Exhibit 2212) and headed "Dealer Status - July 7/49" shows that Swail had an original allotment for that year of 877 tons and that by July 7 he had received 3,500 tons. For this year also there is no evidence which shows what the final results for the year 1949-50 were. For the year 1950-51 a very similar document to that just referred to (Exhibit 4962) found in the files of Winnipeg Supply and bearing the date July 7, 1950, shows Swail as having been allotted 900 tons for that year, but as having already received 6,000 tons.

It seems clear from the figures for the three years last referred to that Swail was not satisfied with the percentage of contract business to which he was entitled under the terms of the arrangement between the members of the group. This conclusion was confirmed by Mr. Brett. Exhibit 4962 contains a note at the bottom in which reference is made to "a deal made with Swail". When questioned as to what was meant by this expression Mr. Brett explained that Swail was not satisfied with his allocation and had been alloted 4,000 tons of additional tonnage in order to secure his co-operation. He added that as far as he could remember Swail's co-operation had been secured

that year, though he might have secured additional tenders later on in the season (Transcript of Evidence, pp. 832-33). A later revision of the quotas dated August 2, 1950, based on a somewhat larger total contract tonnage for the year than had been anticipated when the quotas were first set shows Swail as entitled to 966 tons (Exhibit 2342), but since it appears that he did in fact receive 6,000 tons, it is clear that Swail received in that season more than six times the amount of contract tonnage to which he was entitled under the terms of the allocation plan.

In the spring of 1951 a few of the dealers, particularly Fort Rouge and Swail, apparently decided not to abide by any allocation plan but to try to obtain large tonnages of contract coal. Consequently no allocation was made during that spring and for a time the bidding for contract coal was wide open (Mr. Brett's evidence, Transcript p. 834). Efforts to secure resumption of the arrangement were made through Mr. Brett and there is some evidence that it was reinstated at least by the beginning of July. This is indicated by a circular from Mr. Brett dated July 3, 1951, which was found in the files of Jubilee and which reads as follows:

> "I have called a special meeting for 11 a.m. on Thursday, July 5th, to discuss some aspects of the contract business which I think should be thrashed out. Everything seems to be under control at the moment but if fair division of the tonnage is to be made and that is what we are striving for, it will require the help of everyone to see that this is done to the satisfaction of each dealer. Please try and arrive promptly at 11 o'clock."
>
> (Exhibit 2691)

For the year 1952-53 a document found in the files of Jackson (Exhibit 2546), dated April 15, 1952, shows an initial allotment to Swail for that year of 4,692 tons. A later document (Exhibit 2573), also found in the files of Jackson, dated May 22,1952, shows Swail as being allocated 6,000 tons out of a specific contract for the R.C.A.F. There is no written evidence showing the final results for the year 1952-53, but the oral evidence of the dealers concerned indicates that most of them received their allocated quotas during that heating season.

From the foregoing account there can be no doubt that Swail always desired and generally secured a substantially greater tonnage of the contract coal than would have been his share under the terms of the allocation plan. From the length to which the other dealers went to secure his co-operation on some occasions there can likewise be no question of the importance they attached to the continued operation of the plan and the sacrifices they were prepared to make to ensure its maintenance.

When Mr. Brett was questioned as to the overall success of the plan during the period since 1948 when he returned to the Exchange, he stated that he did not think there had been general satisfaction with it and that he was quite sure that during those years the members of the group had not received approximately the tonnage allocated to them. He further stated that it was the only system that seemed fair and that nobody else had ever come up with an idea that was better (Transcript of Evidence, pp. 698-99). On the other hand, several of the dealers in the group stated that the system had worked reasonably well except for the few months in 1951 when as we have seen, it broke down. Whatever his views as to the success of the plan may have been Mr. Brett exerted continuous efforts to make the operation of the plan more effective. The Commission considers that it is of some significance that the group continued to work under the plan down to the date of the inquiry, notwithstanding the difficulties that have been described. Further, when the plan broke down in 1951, it was not allowed to die, but was revived later in the year for the balance of the season and was apparently in full operation for the next year 1952-53.

When a dealer received substantially less than had been allocated to him in any one season, some attempt was made to make up the loss to him during the next year, not often with much success.

In only one year have we seen what appears to be a complete record of the final allocations made under the plan, together with a complete record of the contracts and tonnage actually received by the several member dealers. This is the year 1947-48. Exhibits 2596-97 already referred to, seem to contain the final allocation of contracts among the dealers forming the tender group at that time. These exhibits were found in the files of Miller, and duplicates, Exhibits 2190-91, were found in the files of Jackson. They show an expected contract tonnage for the year of 57,775 tons plus two small contracts which were apparently being held in reserve, totalling 1,150 tons. Two further exhibits, numbers 2209 and 2210, which bear the handwritten date Jan.21/48, and which were found in the files of Jackson, contain what appears to be, in addition to other information, a complete record showing what contracts were actually obtained by each dealer. A careful examination of Exhibits 2209-10 shows that the total contract tonnage awarded during the year was 56,930 tons, of which 1,635 went to Adams, Red River and Thompson, who were not members of the group in that year, and another 85 tons went to unknown dealers.

Using the foregoing exhibits, namely 2956-57, 2190-91 and 2209-10 the Director compiled a table (reproduced below), showing a comparison of the contracts allotted for the 1947-48 season to the various dealers in the group and the actual awards made for that season (Statement of Evidence, pp. 148-49).

Contract	Allotted to	Awarded to
Fort Osborne Barracks	Simkin - 650	Simkin - 650
Dominion Government:		
Academy Road	Northland - 75	Adams - 75
Deer Lodge 1st	Jackson - 3,700	Jackson - 3,700
Girls Home	Hagborg - 45	Hagborg - 45
	Northland - 215	Northland - 215
Public Welfare	McCurdy - 200	McCurdy - 200
Greenhouses	Already obtained by Adams	Adams - 60
Dominion Government:		
Public Buildings,		
Postal Stations, Etc.	McCurdy - 340	McCurdy - 120
		Hagborg - 115
		Thompson - 50
		Unknown - 85
Immigration Building	Simkin - 750	Adams - 750
Federal Building	Northland - 1,300	Northland - 1,300
Carpiquet Barracks	Capital - 3,600	Capital - 3,600
M.D. 10		
Minto	Simkin - 675	Simkin - 675
McGregor	Simkin - 300	Simkin - 300
202 Main	Simkin - 70[1]	Winnipeg Supply - 70
194 Main	Simkin - 100[1]	Miller - 100
Married Quarters	Simkin - 1,000	Simkin - 1,000
Garage	Simkin - 1,400	Simkin - 1,400
Kitchen	Simkin - 200	Simkin - 200
Barracks (Fort Osborne)	Harstone - 2,500	Harstone - 2,500
	Winnipeg Supply 6,100[2]	
	Swail - See Note [2]	Winnipeg Supply - 5,100
		Swail 1,000
Provincial Power House	Fort Rouge - 4,000	Fort Rouge - 4,000
	Hagborg - 2,000	Hagborg - 2,000
	Harstone - 1,200	Harstone - 1,200
	Swail-2,000	Swail - 2,000

1 Later handwritten corrections on Exhibit 2957 and 2191 allotted these to Miller.

2 Later handwritten corrections on Exhibit 2191 altered Winnipeg Supply's allocation to 5,100 and allotted 1,000 to Swail.

Contract	Allotted to	Awarded to
Manitoba Telephones	McCurdy - 500 Northland - 500	McCurdy - 500 Northland - 500
General Hospital	Jackson - 3,000 Winnipeg Supply - 3,000	Jackson - 3,000 Winnipeg Supply - 3,000
Winnipeg Schools	Fort Rouge - 500 Harstone - 1,500 Jackson - 1,000 McCurdy - 800 Northland - 1,200 Swail - 2,000[3] Winnipeg Supply - see[3]	Fort Rouge - 1,500 Harstone - 500 Jackson - 1,000 McCurdy - 800 Northland - 2,000 Swail - 1,000 Winnipeg Supply - 1,000
Normal School	Miller - 230	Miller - 200
Normal School	Winnipeg Supply - 4,025	Winnipeg Supply - 4,000
Municipal Hospital	Fort Rouge - 3,700	Fort Rouge - 3,700
Normal School Annex	Miller - 150	Not Shown
Deer Lodge 2nd.	Winnipeg Supply - 3,250	Not Shown

[3] Later handwritten corrections on Exhibit 2191 altered Swail's allocation to 1,000 and allotted 1,000 to Winnipeg Supply.

The figures shown in the foregoing table were not disputed by counsel for any of the parties. They indicate that with few exceptions the dealers to whom specific contracts were allocated were remarkably successful in obtaining the award of those contracts. It may be noted that Swail was one of the dealers who received exactly the amount of tonnage allocated to him, and that in subsequent years when he succeeded in obtaining substantially larger tonnage than was allocated to him, the final results may not have been so satisfactory to the members of the group.

Small Contracts Not Included in the Allocation Scheme

Some small contracts which were normally let by tender

were left outside the allocation plan, apparently deliberately. In the main these contracts consisted of comparatively small tonnages required by such institutions as schools and municipal buildings in municipalities within Greater Winnipeg but outside the city area. From information obtained by the Director from the files of the various dealers it would seem that in the heating season of 1952-53 there were probably less than thirty of such contracts. They varied in amount from a low of 10 tons to a high of 965 tons. The total of such contracts is not exactly known but probably amounted to some 6,340 tons, perhaps a little more.

In Mr. Brett's evidence the reason for leaving these small suburban contracts out of the allocation scheme was as follows:

> ". . . In a number of these suburban areas there are dealers, licensed dealers, who have built up their businesses through the years, and I have always suggested to the dealers over in this part of the city, for instance, that they should not interfere with the little dealers who are in business over in those outside areas. I felt it was not a good thing to do."

(Transcript of Evidence, p.812)

This may be the correct explanation but in some instances the dealers did not live up to the policy so enunciated. To give one example, the 1952 contract for 400 tons for the schools in the municipality of Fort Garry, which were not included in the allocations for that year, was awarded to Miller (Exhibit 3060), and tenders for this contract were also submitted by Hagborg, Winnipeg Supply, Beverley and Jubilee (Exhibits 250, 1677, 2724 and 5407).

CHAPTER VII

APPRAISAL OF ACTIVITIES DISCLOSED IN THE INQUIRY

The activities of the Winnipeg Coal Exchange and its members which have been under examination in this inquiry fall into two main groups, namely:

1. Activities connected with the issuing and use of Price Guides or Price List Guides,

2. Activities connected with coal contracts let by tender.

As these two groups of activities are affected by differing considerations they will be dealt with separately.

1. Activities Connected With the Issuing and Use of Price Guides or Price List Guides

The early activities of the Exchange and its members from 1928 down to the institution of wartime controls have already been described in Chapter IV. The Commission considers that its findings of fact are adequately set out in the summary near the end of that chapter, and require no special appraisal apart from the evidence in more recent years.

Price Guides. The evidence from this period and also from the period of wartime controls which terminated in April, 1947, concerning Price Guides is primarily of value in proving that the function of issuing these Guides has been an important and continuing activity of the Exchange since its formation in 1928 and that the purposes for which the Guides were prepared and issued have also been continuous, save for the effect of government regulations during the wartime control period.

It was strongly urged upon the Commission that the Price Guides were intended to be guides for the dealers to assist them in establishing their own retail prices, and nothing more. They were not in any sense intended to fix or establish retail coal prices in the area. Nor was there ever any agreement among the dealers that they would follow the prices contained in the Guides. It was argued that the prices in each new Guide were approved only by the Price Committee or the Executive and not by the general membership and that the

approval given only amounted to approving as a fact that the figures in the Guide properly reflected the result of the study of average costs submitted by the dealers. Circulars issued by the Exchange repeatedly advised the dealers that the Exchange did not fix or enforce prices and that the Guides were issued simply for the information of the dealers, who were at all times free to follow them or not, as they saw fit. A statement to the same effect is contained in the minutes of an executive meeting held on February 20, 1948 (Exhibit 4360).

The Commission is unable to agree that the foregoing argument gives a complete picture of the purpose for which Price Guides were issued. The Commission is satisfied that one of the purposes for which the Guides were issued was the stabilization of retail prices. They were issued in the hope and expectation that the prices contained in them would be accepted and followed very generally by the dealers. That the preparation and circulation of Price Guides were intended and expected to do more than simply to give the dealers information which they might follow or not is obvious from events that occurred during the cost of handling survey of 1951, and for some months afterwards. It will be remembered that when this survey was begun in May, 1951, Winnipeg Supply estimated that the cost of handling domestic coal had risen by 22¢ per ton and would soon rise further. Winnipeg Supply therefore proposed that the cost of handling formula for domestic coal be increased by 25¢. Its proposal was not accepted at that time and Winnipeg Supply continued to urge the need for the 25¢ increase, with what seemed for the moment to be better success late in October. On October 29, new Price Guides were issued, effective November 1, containing price increases of 25¢ per ton for all domestic coals except imported stoker coals. Two days later, Mr. Brett circularized the dealers suggesting that because of a few objections to the new list they continue with the old Price List Guide "until these difficulties have been ironed out". It will be remembered further that Mr. Hagborg in giving evidence said that he felt it was an inopportune time to put on a 25¢ increase. He added, "They issued a price list guide, but I did not follow it. Consequently nobody else followed it." The November 1, 1951, Price Guide was never reinstated.

In the Commission's opinion these events show quite clearly the real purpose and expected result of the Price Guides. It may well be argued that Winnipeg Supply could not with impunity, while its competitors' prices remained unchanged, raise its domestic coal prices by 25¢ per ton, no matter how strongly it felt such an increase was fully justified by increased handling costs. Such an argument, however, only strengthens the Commission's view that Winnipeg Supply's continued efforts to secure approval for the increase are a striking indication of that company's confidence that if such an increase were incorporated in the Price Guide it would be adopted generally by the dealers, and that Winnipeg Supply would not,

by adopting it, be placed in an untenable high price position.

A second point arises from these events. If the Price Guides were only intended to give the dealers accurate information based upon careful cost studies, and were not intended as something that would be generally followed, why was it necessary to cancel the November 1, 1951 Price Guide (presumably the result of accurate cost studies), merely because Hagborg and perhaps one or two others refused to adopt the increase? In the Commission's view the cancellation must mean that the dealers were intended and expected to adopt the increase, but that confusion and ill-will would result if one dealer openly refused to follow.

Mr. Brett's reference to "a few objections" as the reason for the cancellation also indicates that the Exchange felt it was necessary to have very general agreement among the dealers before a new Price Guide was made effective.

Enhancing Prices. One of the allegations in the Statement of Evidence is that the activities and agreements connected with the preparation and distribution of the Price Guides were carried out with the object of raising the level of prices of coal sold at retail in Greater Winnipeg, and were aimed at and succeeded in establishing an artificial price structure which was the basis of pricing to household and steam accounts.

The evidence is quite clear that at the end of the period of wartime controls (April, 1947) the dealers represented by the Exchange felt that the profit margin in the industry was unsatisfactory, that a net profit equal to 4% of the selling price would be fair, and that from that date the Price List Guides were prepared with the purpose of producing this result, the prices in the Guides including the cost of the coal at the mine, freight, allowances for loss of weight and degradation, average dealer handling costs as worked out by cost studies, and an amount for profit equal to 4.17% of the total of the foregoing items, which resulted in a profit figure of 4% of the retail price.

It was contended on behalf of the Exchange that increases in the prices contained in the Price Guides merely reflected increases in mine prices, or in freight, or arose out of cost studies showing corresponding increases in the average dealer handling costs or in losses from loss of weight or degradation, or from the application of the 4% profit margin to the resulting higher total dealer costs. It was further stated that the dealers had never succeeded in realizing their objective of a profit equal to 4% of their selling price (Exhibit AD-1, also see Exhibit CB-1).

Whatever success or failure may have attended efforts to produce for the dealers a net profit equal to 4% of their total selling price of coal, these efforts were unquestionably directed toward

increasing dealer profits. This objective could be sought either by a reduction in dealer costs resulting from improved methods or increased efficiency, or by an increase in selling price. The Exchange did urge upon the dealers the necessity of reducing costs and it endeavoured to cut down bad account losses by sending to the dealers each year a list of customers who had not paid their bills (Transcript of Evidence, pp. 1028-29), but the Commission has seen no evidence either of prices being reduced or of a proposed price increase being rejected because of reduced costs arising from improved coal handling methods or increased efficiency. Perhaps under the circumstances existing during this period (Arpil, 1947, to the date of the inquiry) no such evidence could be expected.

Price changes during this period, as shown by the Price List Guides, were almost invariably upward. What was the nature of these increases? Increases in mine prices or in freight were almost automatically reflected by corresponding increases in the retail price. Such increases, of course, did not improve the dealers' position profitwise. It was to the dealers' cost of handling and to a lesser extent to costs arising from loss of weight and degradation that the Exchange directed its chief attention, these being matters for which the charges were not outside dealer control. In addition, the adoption in 1947 of a profit margin of 4% of selling price, and its inclusion in the prices listed in the Price Guides, involved an increase in price, since the Sharp Woodley report of 1946 showed that in 1945 the dealers whose accounts were examined by that firm had enjoyed profits far below that level.

With respect to the cost of handling surveys the Commission is satisfied that the Exchange made a conscientious effort to ascertain the average costs of reasonably efficient dealers as shown by their experience in the preceding year. However, the available evidence suggests that in some of these surveys cost data were obtained from too few dealers for the figures to be very reliable.

The actual results, pricewise, of the surveys may be summarized briefly, as follows:

December 1947 Survey

This survey led to increases in the domestic cost of handling formulae of 58¢ per ton for all coals except Souris and 49¢ for Souris, which formulae were incorporated in new Price Guides effective March 1, 1948.

November 1949 Survey

This survey apparently showed an increase in overall handling costs of 24¢ per ton. However, no general price increase followed, the only increase being that the cost of handling formula for

Souris coal was brought up to that for other coals, both domestic and steam. Why a general increase was not made at this time has not been explained.

August 1950 Survey

This survey led to an increase in the cost of handling formula of 30¢ for domestic coals and 20¢ for steam coals. The evidence available to the Commission concerning this survey may be incomplete and is not satisfactory. The cost figures for only four dealers have been found. For two of these dealers the cost figures for the previous year are also known and for both of them the figures for 1950 are lower than in 1949. Yet the foregoing increases were adopted.

May 1951 Survey

The Commission has no exact information as to the average cost of handling figure worked out as a result of this survey, though figures for some 13 dealers are known. In a circular dated October 29, 1951, Mr. Brett said that no appreciable difference in the cost of handling coal was indicated over operations of the previous year (Exhibit 4622). No true increase in the cost of handling formula was adopted at this time, though 5¢ was added to cover the cost of a joint advertising campaign, being attributed not to overhead handling costs but to the loss of weight and degradation allowance. The subsequent abortive attempt to provide for a 25¢ increase in domestic handling costs by means of a new Price Guide intended to be effective November 1, 1951, but cancelled before coming into effect, has been described.

May 1952 Survey

This survey led to increases effective August 1, 1952, in the cost of handling formulae over those adopted in 1950, the increase for domestic coal being 55¢ per ton and for steam coal 40¢ per ton. These charges were 10¢ higher for domestic coal and 5¢ higher for steam coal than indicated by the average dealer costs obtained from the survey. No explanation for the difference has been given to the Commission.

With respect to loss of weight and degradation allowances the Exchange did not make regular periodic surveys. Its efforts to have these allowances correspond with average dealer experience were not entirely thorough. This is indicated by the fact that when Mr. Brett explained how he had discovered that these allowances for one kind of lump coal, totalling $1.00 per ton, were 30% to 40% too high, and had had them adjusted in the Price Guide, he also stated that he thought the higher allowances had been in effect for some years, apparently undiscovered.

Some of the increases in allowances for loss of weight and degradation were arbitrary. This is true of the 5¢ per ton increase made on August 1, 1951, to cover the cost of an advertising campaign, which according to Exhibit 1458 was to cost 1¢ per ton, and which was continued in all subsequent Price Guides. It is also true of a 25¢ increase authorized by an Executive meeting on December 5, 1951, effective December 15, on certain "coals that are increasing". It may be that this 25¢ was intended to cover increasing handling costs for those particular coals, but the 25¢ seems to have been added arbitrarily to the loss of weight and degradation allowances. When the cost of handling formulae were revised prior to the new Price Guides of August 1, 1952, the loss of weight and degradation allowances for a few of these coals were reduced slightly, but the allowances for many additional coals were increased, the effect being to put all of them on a par with Drumheller, which was one of the coals given the 25¢ increase in the previous December.

As the dealers' actual and estimated costs rose, for mine price, freight, cost of handling, loss of weight and degradation, the amount included in the retail selling price to cover the 4% profit margin was also adjusted upwards, though it should be noted that the price book figures indicate that in many instances this adjustment was not made promptly.

The Commission does not accept the proposition that the people engaged in an industry are justified in working out their average costs and establishing uniform prices for their products based upon those costs plus a certain margin of profit. Such a system would close off from the public the opportunity of benefiting from the lower costs of the most efficient operators and would greatly lessen the incentive of dealers to be searching continually for ways to improve the conduct of their business which is present when dealers have to meet the competition of enterprising rivals on a price basis. This danger becomes greater when arbitrary elements form part of the basis for pricing. We have seen that there were some arbitrary increases in the allowances for loss of weight and degradation. Further, while the evidence is not conclusive, it may well be that there was an arbitrary element in at least some of the increases in the cost of handling formulae, e.g., those resulting from the surveys of August 1950 and May 1952.

Bearing in mind that the prices shown in the Price Guides were very generally adopted by the dealers it is evident that the use of the Guides resulted in increased prices to consumers. Undoubtedly increases would have occurred if there had been no Exchange and no Price Guides, but it is not likely that they would have occurred uniformly, at the same time, or in the same amounts as happened in the circumstances disclosed in this inquiry.

Support for the view expressed in the last preceding paragraph is found in two circulars issued by Mr. Brett in 1951. The first has been referred to earlier in this report. It is dated May 22,

1951, and contains the following statement:

> ". . . We are, at present, commencing another study of handling and delivering costs with a view to increasing our gross profit margin. Such studies carried out last year brought to the Winnipeg dealers an increased profit of approximately $300,000.00 and of course, paid for Coal Exchange assessments many times over the fees assessed. It is possible that our studies for this year will have a similar result."

The second is dated November 7, 1951. In it Mr. Brett suggested:

> ". . . that we reflect for a moment upon the contribution the Coal Exchange has made to our members in the past ten years. In 1941 our average gross profit on domestic sales of imported and western coals was $3.40, on lignite $2.65. Since that time we have delivered over six million tons of domestic coal. The total gross profit increase in the ten year period amounts to several million dollars."

The figures in these two circulars are probably exaggerated and allowance should be made for the natural bias of a man speaking about the work in which he is engaged. Nevertheless, after making full allowance for these facts, the foregoing extracts show that in the opinion of the man who, except for two years from 1946 to 1948, was the Exchange manager during the whole of the period mentioned, the dealers' margins had been substantially increased through the medium of Exchange activities.

Counsel at the hearing argued that the Exchange and its members were not in a position to control the retail trade in coal in the Greater Winnipeg area, also that they had done nothing and could do nothing which was or was likely to be detrimental to the public. In support of this argument a number of exhibits in the form of statistical information were filed and oral evidence was given, chiefly by Douglas G. Scott, a chartered accountant, and Gilbert Edward Jackson, a consulting economist.

In the first place it was contended that no attempt had been made to enforce observance by the dealers of the prices set out in the Price List Guides. The Commission agrees that no evidence having probative value has been presented to it of any attempt at enforcement since the pre-war period.

It was further contended that no attempt at enforcement of Price Guide prices could be made successfully, since neither the dealers nor the Exchange controlled either the supply of coal or entry into the trade. There is no evidence of any such control nor is there any evidence of any arrangement between the dealers or the Exchange

on the one hand and mine owners or wholesalers on the other for co-operation in controlling supplies.

In the Commission's view while the existence of enforcement measures would be evidence strongly adverse to the Exchange and the dealers who supported them, their absence is not conclusive evidence in their favour. Restrictive arrangements have often been found to work effectively without penalties or other enforcement provisions.

In the second place counsel contended that in this industry there were no restrictions on entry into the business, certainly none in the Winnipeg area. True, under the Winnipeg Fuel By-Law, No. 15517, a coal dealer is required to be equipped, either alone or together with not more than three other coal dealers, with platform scales of not less than 5 tons capacity and storage capacity for at least 150 tons of coal. In addition he must possess or have the use of at least one truck for delivering coal. These limited requirements mean that entry into the coal business is very free, needing only a small capital investment. Neither the Exchange nor the dealers have any means of preventing a prospective dealer from entering the business. The Commission has seen no evidence to contradict this argument, but here again, while restrictions upon entry, if imposed by the Exchange, would have been evidence adverse to the Exchange and the dealers, their absence is not conclusive evidence in their favour.

In the third place it was argued that the increasing competition in recent years from fuel oil, competition over which the Exchange and the coal dealers had no control, made it impossible for prices to be enhanced or other restrictive practices invoked in a fashion detrimental to the public interest. It is quite clear from several exhibits that in all the larger centres in Canada, except perhaps in one or two cities where natural gas was readily available, fuel oil was making steady and even rapid gains upon the domain of coal as a heating medium, during the years from the end of the war down to the date of this inquiry. These exhibits indicate that in Winnipeg the switchover from coal to oil developed more slowly than in many other cities; e.g., Exhibit CC-2, compiled from figures obtained in the Census of Canada for 1941 and 1951, shows that while in Halifax, Montreal, Toronto, Winnipeg, Regina, Saskatoon and Vancouver the use of oil as a heating medium for dwellings had increased substantially during the ten years from 1941 to 1951, the increase had been much less in Winnipeg than in any of the other cities named. In Winnipeg in 1951 only 9% of dwellings were heated by oil. In the other cities the percentage ranged from a low of 29.1% (Vancouver) to a high of 51.1% (Halifax).

From these exhibits it was argued that the service and prices afforded by the Winnipeg coal dealers must have been reasonably satisfactory to the consumers, otherwise the tendency to

switch from coal to oil would have been much more marked. The Commission considers that this statement may well be correct, but there are many unknown factors in the situation which would render any conclusions that might be drawn therefrom of doubtful value.

Whatever the total reasons may have been (one was certainly the practical disappearance of wood as a heating medium between 1941 to 1951), retail sales of coal in the Winnipeg area increased in every year from the end of the war in 1945 till 1950, in which year they reached the highest tonnage in the city's history. Sales of oil had also been increasing since 1946, but it was only after 1950 that the competitive threat of oil began to have a serious effect upon the coal business. In the three years from 1950 to 1953 coal sales in the Winnipeg area dropped from 897,886 tons to 640,902 tons, or if we take the 1950 figure as 100% they dropped to 70.3% in 1953 (Exhibit CC-1). While witnesses stated some of this decrease might be attributed to milder winters they asserted that most of it was due to the increasing consumption of oil. It seems reasonable to assume that not only is this latter statement true but that the trend to oil has probably continued since the date of the hearing. The greater convenience and cleanliness of oil must be balanced by the consumer against its higher price and the not inconsiderable cost of installation, but under conditions of general prosperity we may reasonably expect that more householders will continue to change from coal to oil. In this connection it may be noted that the successive construction of large oil refineries in the Winnipeg area since the war has rendered increasing supplies of fuel oil readily available.

The continuing threat of oil competition since the war and its increasing encroachments on coal since 1950 are factors which in the mind of the Commission have greatly curtailed the power of any organization of coal dealers to cause actual detriment to the public by agreements or arrangements enhancing prices.

The ease with which the retail coal trade may be entered also has a limiting effect upon the power to enhance prices. This industry, through the years, has been subject to a fluctuating competition from persons whose regular business was largely confined to the spring and summer season and who found themselves in the fall of the year with an unemployed truck on their hands. Any pronounced move in the direction of enhancing prices would cause the coal trade to become more attractive to these temporary competitors and would likely result in some persons seeking entry to the business on a permanent basis.

The Commission has no evidence on which to reach a conclusive opinion as to the exact deterrent effect of the foregoing factors. They may have been of sufficient strength to preclude substantial public detriment measured in terms of dollars and cents. Some support for this view is found in statistical exhibits filed at the

hearing. For example, Exhibit CB-1, filed by Mr. Scott, shows the operating results obtained by 15 Winnipeg dealers in the years 1948 to 1953 inclusive. The 15 firms include four large firms (one the largest of all), a number of medium sized firms and three small firms, and to that extent may be regarded as representative of Winnipeg dealers generally. The various tables in the Exhibit were compiled almost entirely from audited statements of the dealers' operations, prepared by chartered accountants. With one exception all of the 15 dealers are incorporated companies, and most of them appear to be family corporations managed directly by the people who own the stock. Because of the provisions of the Income Tax Act, which impose a tax on the income of a corporation and also on the dividends received by the shareholders, this last fact may affect the expenses and earnings picture of these dealers as shown by the Exhibit. The Exhibit gives the profit or loss position as a percentage of sales in all cases, so that it is not very helpful for determining whether or not a satisfactory profit was earned on the capital stock. Again, for several of the dealers certain details of information are lacking.

With these limitations in mind the Exhibit indicates that the average net profits, before income tax, of these dealers for their fiscal years ending in the calendar years 1948 to 1953, (expressed as a percentage of sales) were as follows:

Year	Average Profit
1948 (13 dealers)	2.08%
1949 (14 dealers)	1.84%
1950 (15 dealers)	1.94%
1951 (15 dealers)	1.99%
1952 (15 dealers)	.43%
1953 (15 dealers)	1.96%

The Exhibit further shows that one dealer, whose figures are given for the last four years only, enjoyed much better than the average profits, his figures being as follows:

1950	4.75%
1951	3.48%
1952	4.20%
1953	4.36%

Only four other dealers, including the largest dealer, showed a profit in every year. One large dealer showed losses in very year except 1948. In 1952, five of the 15 dealers showed a loss and in 1953, seven of the 15 showed a loss.

The foregoing record, as shown by this Exhibit, indicates that prices were not raised in a manner which produced large profits for the dealers. Nor does it appear that the increases

in prices which occurred during these years had the effect of holding an umbrella over the heads of inefficient firms, since the last two years of the period showed more dealers losing money than any of the earlier years. In the years 1948 to 1951 inclusive, the number of these dealers who lost money varied from one to three.

Exhibit CC-13, filed by Mr. Gilbert E. Jackson, compares the figures contained in Exhibit CB-1 for the years 1948 to 1951 inclusive, with figures for those years given in the Taxation Statistics published by the Department of National Revenue, which set out the average rates of profit on gross sales earned by all retail fuel and ice merchants in Canada. This Exhibit indicates that in each of those years the percentage rate of profit for the Winnipeg dealers analyzed in Exhibit CB-1 was lower than the percentage rate for all Canadian dealers.

While the figures in these two Exhibits, CB-1 and CC-13, take no account of important unknown factors, such as the effects which might have flowed from freely operating price competition, and must therefore be used with caution, they do lend some support to the argument that the operations of the Exchange did not result in prices which brought large profits to the dealers. Assuming that the aim and purpose of the Price List Guides was to increase dealer profits, these Exhibits suggest the inference that conditions in the industry, of which growing competition from fuel oil was probably a major constituent, reduced their effectiveness for that purpose.

After careful study of other evidence given and exhibits filed at the hearing the Commission is of the opinion that they do not assist us further in analyzing the use of the Price Guides and their effect upon the public interest. In brief, our conclusions upon this phase of the inquiry may be stated as follows:

The preparation, circulation and use of Price List Guides did not eliminate price competition entirely but did result in substantial curtailment of such competition. In principle such arrangements and activities are likely to prove detrimental to the public interest, by removing in large measure the protection afforded, by freely operating competitive factors, against arbitrary prices. In this case some enhancement of prices did occur. On the other hand, conditions in the industry, e.g., ease of entry as a seasonal occupation, but more especially the definite threat of fuel oil competition since 1946 and the increasing seriousness of actual competition from fuel oil since 1950, have limited and greatly curtailed the extent to which prices might be enhanced. The fear that higher prices might produce reactions hastening the trend to oil is evident from references appearing in the minutes of meetings and from Mr. Brett's circulars exhorting the dealers to keep their operating costs down. Under these circumstances the Commission is unable to say that the arrangements and practices carried on by the Exchange and its members in

connection with the preparation, issue and use of Price List Guides have resulted in actual public detriment of a substantial nature.

From a careful examination of the evidence as a whole the Commission is satisfied that the dealers had no thought of establishing prices which could be regarded as excessive or which would either lead to abnormally large profits or hold an effective umbrella over the operations of inefficient dealers. They sought, through the medium of cost studies and Price List Guides, to keep prices uniform or at least to avoid extensive price-cutting. This aim, and the methods employed to achieve it, are in our opinion, objectionable on the ground that they are likely to lead to public detriment, but under the circumstances disclosed in this case the detrimental effect seems probably to have been not great.

It must be borne in mind, however, that in spite of the fact that many householders have already changed to the use of oil and that many others are in a position to do so or to shift to natural gas when it becomes available, there will be many who will continue to use their existing heating equipment and rely on coal for fuel. To these householders the cost of coal will be an important element in their budgets and any practices among dealers which raise the price of coal, in whatever degree, higher than it would be under more competitive conditions necessarily operate to their disadvantage.

2. Activities Connected With Coal Contracts Let By Tender

In the opinion of the Commission, the allocation scheme described in Chapter VI, and operated by a group of the dealers with the assistance of Mr. Brett, resulted in definite public detriment and was, by its very nature, almost certain to have that result. We have seen that it was a deliberate attempt to divide practically all the retail coal business let by tender in the Winnipeg area among the members of the group, the basis of the division being that each member should receive the same percentage of the contract business in any one year as he had secured of all the retail coal business done by members of the group in the previous year. We have seen that the first stage of the scheme involved an estimate of the total contract tonnage expected to be let by tender during the year and the allocation to each member of the number of tons that represented his percentage of that total. The second stage involved the allocation of specific contracts or portions of contracts to the several dealer members, the sum of the contracts allotted to each being as nearly as possible equal to the tonnage he was entitled to receive under the scheme. The dealer favoured in this way with a contract, submitted his tender at a price fixed by himself and notified Mr. Brett of the amount of his price. Other interested dealers were informed of his price and were expected either not to tender at all or to tender at a higher price.

Such, in brief outline, was the scheme.

To the extent that such a scheme operated successfully it could only result in defeating completely, or almost completely, the whole purpose of calling for tenders. Tenders are designed to secure competitive bidding, and to obtain for the purchaser any price advantage which may flow from the favourable position or competitive needs or desires of competing tenderers. Where there is, in effect, only one tender, at a price fixed by the tenderer in the knowledge or at least expectation that other dealers will not underbid, the purchaser is deprived of his right to receive competitive bids, he suffers detriment by the loss of any price advantage which would result from genuine competitive bids, and unless he knows the true state of affairs, he is probably deceived into thinking the bids he receives are in fact competitive.

On behalf of members of the tender group a number of arguments were advanced by counsel at the hearing. While admitting the holding of meetings and the "modus operandi" of the plan, it was contended:

(a) That the plan was not devised for the purpose of increasing dealer profits but was a legacy from the days of wartime coal shortages, and was designed to make sure that government buildings and large essential institutions like hospitals and schools would obtain adequate supplies of coal together with good service, rather than with a view to profits. To this end, allocations under the scheme were made to the dealer who was best equipped and who had the best location to undertake the particular contract.

(b) That the scheme was an allocation scheme only, with no attempt being made to fix the price at which the favoured dealer should bid.

(c) That there was nothing to prevent any member of the group or any outside dealer from tendering at a lower price than the favoured dealer's price. The tenders were not restricted to members of the group, but were open to any dealer who desired to bid.

(d) That in many cases the allocation scheme failed because one or more dealers underbid the favoured dealer.

(e) That no effort was made to get dealers to join the group, nor was any effort made to keep any dealers out.

(f) That the practice under which the favoured dealer disclosed his tender price was designed to have or did have the effect that other dealers would be able to underbid, and often

did underbid, if they thought his price was too high. Thus the end result of the scheme was to hold prices down.

(g) That the prices tendered under the scheme were in most cases below the prices shown in the current Steam Price List Guide, and were never higher.

We will discuss these arguments in turn:

(a) The tender scheme, as it has existed in recent years, may have had its origin in wartime shortages and the need to ensure supplies to vital institutions, but it must be remembered that at that period maximum prices were set by government regulation, and that under conditions of wartime shortage of supplies it was difficult for a dealer to bid for and take on a new large contract because the output of the mines was already largely contracted for (See evidence of Mr. Robertson of Winnipeg Supply, pp. 2350-1 of Transcript of Evidence). Further, if a dealer was unable to take on new business, he would have no need for a system to deter others from bidding. The situation is very different under conditions of plentiful supply and no government control. Under conditions of scarcity a system designed to make sure that vital business is taken care of may be necessary, but under conditions of plenty a system of allocation works against rather than in the interest of the purchaser. With adequate supplies available and a number of dealers prepared to compete freely for the business, there is no reason to believe that public buildings and institutions would not have been well served without the intervention of anything of the nature of the allocation scheme. Surely the best equipped dealer, having the best location with respect to making deliveries to a particular building, would be in an excellent position to obtain the contract for that building, without being afforded assistance from an agreement with other dealers.

The Commission is satisfied that the scheme was carried on with a view to improving the position of the dealers profitwise. There is no reason to believe otherwise. These were businessmen and the scheme was concerned with the business in which they were engaged. Certainly they intended to give and no doubt did give good service to the institutions whose contracts for coal they obtained. On the other hand, each dealer hoped through the successful operation of the scheme to obtain those contracts which would be most beneficial to him. The importance attached by the members of the group to the continuation of the scheme, and its revival in the summer of 1951 after a few months of disruption seem capable of no other explanation. Mr. Brett's memorandum in 1951 (Exhibit 4729), quoted in part near the beginning of Chapter VI, further indicates that the purpose of the scheme was to produce satisfactory profit margins for the tendering dealers.

There is also the further fact that the number of dealers

who were members of the tender group increased fairly steadily from 10 in 1946 to 22 in 1952, which strongly suggests that, to increasing numbers of dealers, the tender branch of the coal business did not appear to be unprofitable.

(b) The Commission agrees that the scheme was in essence an allocation and not a price fixing scheme. While there is evidence that in some instances a dealer discussed with Mr. Brett or with another dealer or dealers the price which he might quote, there is no evidence of any pressure being brought to bear to induce him to bid at a certain price. In the opinion of the Commission this fact does not in any sense restore to the public the safeguards afforded by open competition, which safeguards were precluded by the operation of the allocation scheme. The fact that a dealer who had been allocated a certain contract fixed his own price instead of quoting a price agreed upon by others, in no way assisted the purchaser to obtain the lowest price which competitive bidding might have produced.

(c) The Commission has seen no evidence that indicates that any effort was made to prevent any member of the group or any other dealer from tendering at a lower price than that of the dealer to whom a contract had been made under the scheme. Further, tenders were not restricted to members of the group, nor did the group have the power to restrict tenders to themselves. All dealers had an opportunity to learn what tenders were called for, and all were free to tender. However, it seems clear that the tender group comprised all or nearly all the dealers who were interested in this type of business and that there was at least an understanding or gentleman's agreement that the dealer to whom a certain contract had been allocated should not be undercut. While instances did occur of bids being made contrary to this understanding and while the scheme broke down altogether for some months in the spring of 1951, the weight of evidence is definitely to the effect that the operation of the scheme was generally satisfactory. In the only year for which the final results of the scheme have been available to the Commission, the documents indicate that the dealer members to whom particular contracts were allocated were almost universally successful in obtaining those contracts.

(d) It is true that in a number of instances a member dealer or an outside dealer undercut the dealer to whom a contract had been allocated. Occasional breaches of an understanding of this sort do not destroy it. They are almost certain to cause friction and ill-will among the other dealers participating in the scheme, but in this case it seems they were not sufficiently numerous or important to lead to its abandonment. Even when the scheme broke down in the spring of 1951 due to independent action being taken by two or three dealers, notably Swail and Fort Rouge, the scheme was regarded as being so much worthwhile that efforts to revive it were begun very shortly, achieving successful results within a few months.

(e) There is no direct evidence that efforts were made to induce dealers to join the tender group and there is no evidence that efforts were made to prevent any dealer from joining. The evidence is, however, that the group was first formed of those dealers, few in number, who were interested in this class of business. It is also clear that in several instances dealers, who in one year were not members of the group but who bid for and obtained one or more contracts, were included in the group the next year. Again, since the record shows that the members of the group in each year obtained the great majority of the contract business, perhaps 85% on the average, it seems clear that practically all who were interested in this tender business did in fact join the group. It was natural that the group should seek to bring within its number any dealer who showed a desire to seek business of this type. The more nearly the members of the group coincided with the total of the dealers who sought tender business the more likely the scheme was to achieve success. It should be noted further that many dealers did not have the equipment or storage facilities to enable them to undertake large contracts.

(f) The Commission does not agree with this argument. It is true that the knowledge that his bidding price would be disclosed to other interested dealers and that other dealers could bid if they so desired would deter a dealer from tendering an obviously high price. Such a price would almost invite some other dealer to underbid while still allowing him a very good margin of profit. However, the fact that possible underbidding would have a moderating effect upon a favoured dealer in making up his tender does not, in the Commission's opinion, mean that the dealer disclosed his price in order to give the other members of the group some control over it. We consider it most unlikely that a dealer would be motivated in this manner. The natural and obvious reason for disclosing his tender price, a reason for which the evidence affords adequate support, was so that other members of the group, knowing his price, could the more readily respect his favoured position by bidding at a higher price, if at all. It is also obvious that disclosure would operate reciprocally, so that the dealer who was favoured in respect of one tender would be expected to favour other dealers in respect of other tenders, with a resulting general tendency toward higher prices. While prices tendered under this scheme were probably lower than would have been the case if bidding by other dealers had been entirely excluded, the scheme removed the protection afforded to the public by free and open competition, with the almost certain result that prices paid by purchasers were higher, at least in some instances, than could have been expected under fully competitive conditions.

(g) The evidence establishes that tender prices under the scheme were generally lower, and seldom if ever higher, than the prices contained in the current Steam Price List Guide. A large purchaser of coal would be almost certain to know the price on the

Steam List at which non-contract tonnage would be supplied and the dealer would know that he would have no chance of obtaining a contract if the price quoted in his tender was no lower than that available on individual purchases. Further, the evidence clearly indicates that possession of large contracts of this kind enables a dealer to keep his staff more steadily employed, to utilize his equipment to better advantage, and to arrange his deliveries on a more economical basis, than would otherwise be the case. This being so, prices somewhat lower than usual might be expected, and the question surely is, not whether tender prices were lower than the prices on the Steam List, but at what level under the Steam List might we expect to find prices if tenders were made on a freely competitive basis. Were prices under the scheme higher than they would have been in the absence of such a scheme?

It is not possible to determine the specific effect which the system of allocating tenders had in raising prices on this class of business, but the Commission is convinced that its tendency was clearly in this direction.

CHAPTER VIII

CONCLUSIONS

One thing is abundantly clear from the evidence in this inquiry, viz., that the retail coal business in the Winnipeg area, in common with other parts of Canada, has had to contend with the serious problems arising from a contracting market brought about by the inroads made by competing fuels. Prior to the war, the history of the fuel business in Winnipeg was that wood was at all times a competitor, and sometimes a serious competitor, of coal, particularly for the requirements of certain types of dwellings. In 1941 wood apparently accounted for about 23% of the retail fuel supplied in the area. By 1946 wood had practically ceased to be a competitive factor and had almost disappeared from the field. In that year the Dominion Bureau of Statistics records, in the census for Manitoba and Saskatchewan, that out of 56,289 occupied dwellings in Winnipeg coal or coke was the heating medium for 50,697, wood for 1,012, and oil for 507 (Exhibit CC-3). To all intents and purposes coal appeared to be in a completely dominant position.

This situation soon changed. A trend of domestic consumers to the use of oil developed. By 1951 oil, which in 1946 was heating only 1% of Winnipeg dwellings, had become the heating fuel for 9%. This trend has continued. Even with the very considerable increase in total dwellings brought about by new construction, the net result, by the time of the hearing in this inquiry, showed a heavy and increasing reduction in sales of coal, not only relatively to sales of oil, but absolutely. There is no reason to believe this trend has not continued to cause serious difficulties for coal dealers. When, in addition to oil competition, it is realized that probably within a year or two at most, natural gas will be available in large quantities for heating purposes and other fuel use in the Winnipeg area, and may offer advantages not possessed by oil, it becomes apparent that the end of a diminishing coal market may not yet be in sight.

Under these existing circumstances and future prospects the Commission considers it essential, if the coal dealers are to have any hope of retaining a substantial share of the market in this area, that every effort must be made to improve handling methods and overall efficiency of operation. Competition from oil and gas will provide a spur for such efforts but the Commission believes that competition between the coal dealers, including price competition, will also be necessary. In the opinion of the Commission the system of Price Guides which it has been the practice for Winnipeg dealers to follow has tended to produce less rather than more effective price competition and has thus made less certain that those adjustments in coal

distribution which will produce the most beneficial results in the public interest will be made as promptly and fully as possible. In many fields of distribution changes have been made under the spur of competition, changes which many people in the same line of trade had previously considered impossible, their opinion being based on the costs that must be met under existing traditional methods. Developments leading to lower distribution costs may not be achieved as readily in some fields of trade as in others, but only when competition is operating freely can the public be assured that efforts in this direction will be most persistently made. For this reason the Commission believes that the continuance of the system of preparing and circulating Price Guides by the Winnipeg Coal Exchange is likely to operate against the public interest. We are further of the opinion that the allocation scheme for contracts let by tender should be terminated, and tendering restored to its intended and obviously proper position of free competitive bidding.

In view of the conclusions the Commission has reached on the general aspects of the inquiry, we deem it unnecessary to make an appraisal of the evidence and arguments relating to particular dealers on whose behalf it was claimed that their relationship to the Exchange and its activities was on a distinctly different footing than that of the majority and should be considered separately.

(Sgd.) C. R. Smith

Chairman

(Sgd.) A. S. Whiteley

Member

Ottawa,
January 9, 1956.